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DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Agriculture and Natural Resources

BUREAU OF FISHERIES

FISHEREIS ADMINISTRATIVE ORDER No 14–11

April 23, 1959

AMENDING SUBSECTIONS (*c*) AND (*d*) OF SECTION 3 OF FISHERIES ADMINISTRATIVE ORDER NO. 14, AS AMENDED BY F. A. O. NO. 14–6, AND ADDING THERETO SUBSECTIONS (*e*), (*f*), AND (*g*).

SECTION 1. Subsections (*c*) and (*d*) of section 3, of Fisheries Administrative Order Numbered Fourteen, as amended, by Fisheries Administrative Order Numbered Fourteen–six (14–6) is hereby further amended to read as follows:

"(*c*) Any person qualified under the law to acquire public forest lands for fishpond purposes in accordance with section 63 of Act 4003, as amended, and the rules and regulations promulgated thereunder, may be granted a permit or lease covering an area not exceeding fifty (50) hectares subject to the exceptions herein provided for. A person who is actually a holder of a fishpond permit or lease covering an area as provided herein, shall be precluded from acquiring any right or interest in another permit or lease, even if his interest is that of a stockholder or member of a corporation, partnership or company.

A husband and wife living together shall not hold under individual or separate permits or leases an aggregate area exceeding fifty (50) hectares. A husband and wife, who are living separately by virtue of a decree of legal separation granted under the Civil Code of the Philippines, may each apply for a fishpond permit or lease covering an area of not more than fifty (50) hectares.

"(*d*) An association or corporation, duly registered with the Securities and Exchange Commission and authorized by law to transact business in the Philippines, may be granted a permit or lease covering an area not exceeding four hundred (400) hectares subject to the exceptions herein provided for; *Provided, however,* That if the total area covered by the permit and or lease of the members or stockholders is less than four hundred (400) hectares, the permit or lease that may be granted to said association or corporation, shall be only for the area necessary to complete the maximum area allowed to such association or corporation, including the aggregate area held under permit or lease by the members or stockholders.

SEC. 2. Subsections (*e*), (*f*), and (*g*), are hereby added to Section 3, FOA No. 14, as amended, to read as follows:

"(*e*) The provisions of the preceding paragraphs (*c*) and (*d*) notwithstanding, the Secretary of Agriculture and Natural Resources may, in his discretion, increase or decrease the area that may be granted for reasons of public interests, taking into consideration (1) the financial capacity or qualification of the applicant; (2) the importance of the project or industry for which the area is applied for; and (3) the technical training and background of the applicant.

"(*f*) A yearly fishpond permit may be issued covering an area allowed under this order, for not more than three (3) years subject to the following conditions: that the applicant shall, at the date of filing of an application, and as a guaranty of his financial capacity or qualification, deposit with the Director of Fisheries, or his duly authorized representative, the amount equivalent to one-fifth (⅕) of the total amount of improvement required for the whole area, based at ₱500.00 per hectare, either in cash, saving deposits, postal money order, cashier's check, certified check or manager's check issued by a recognized commercial or rural banking institution; but that said deposit or deposits shall be returned to the applicant upon issuance of the corresponding permit, or immediately after the rejection or cancellation of the application filed covering the area.

The conditions hereinabove provided shall apply to all pending applications.

"*(g)* A long term lease for a period not exceeding twenty (20) years may be issued to a fishpond permittee, covering only portion or portions of the area fully developed within three years; undeveloped portion or portions under said permit, upon proper segregation, will be made available to other qualified applicants.

SEC. 3. All regulations or parts thereof which are inconsistent with the provisions of this Order are hereby repealed.

SEC. 4. This Administrative Order shall take effect upon its approval.

AMANDO M. DALISAY
Acting Secretary of Agriculture and Natural Resources

Recommended:

HERACLIO R. MONTALBAN
Director of Fisheries

Approved:

By authority of the President:

JUAN C. PAJO
Executive Secretary

HISTORICAL PAPERS AND DOCUMENTS

THE PRESIDENT'S SPEECH IN TACLOBAN CITY ON OCTOBER 20, 1959, COMMEMORATING THE 15TH ANNIVERSARY OF THE LANDING OF LIBERATION FORCES

MY COUNTRYMEN:

FIFTEEN years ago today the free world was thrilled by the stirring news that the American forces had at last landed on Philippine soil. In fulfillment of a solemn promise previously made by her acknowledged leaders, America had resolutely fought her way, island by island, until finally she reached our shores to deliver our country and people from the clutches of the enemy. There had been days when our hopes were getting dim as the occupation stretched out into months and then into years. Enemy propaganda had kept dinning into our ears the idea that America would never return, that she would liberate the countries of Europe but would leave the countries of Asia to their fate. However, in spite of everything, we clung steadfastly to the belief that America would redeem her plighted word. We were not disappointed, for she did come. On that rainy October morning General Douglas MacArthur and former President Sergio Osmeña waded ashore together as the head of glorious American forces of liberation symbolized that act historically the unity of purpose of the two countries they represented. The landing of these two great leaders seemed to signify that, as our two peoples had gone down in temporary defeat two and a half years before, so could they now stand proudly together on that momentous occasion to usher in the reality of victory.

The landing in Leyte was fraught with significance for the Filipino people. For one thing, it meant the beginning of the liberation of the Filipinos from the untold hardships and sacrifices which we had stoutly borne ever since we came under enemy control. It meant the end of the mental agony and the painful uncertainty under which we had been living during the long and terrifying night of the enemy occupation. For another thing, it meant the end of house searches and forced labor, of tortures and executions. No longer were our people to be subjected to all kinds of indignities. No longer were our crops and our animals to be forcibly commandeered in order to feed the occupation forces while many of our people starved. All of these were to come to an end because the Supreme Commander of the American troops had vowed to destroy every vestige of enemy control over our country and to restore the liberties of our people. And he made good that pledge.

And so it is no wonder that, everywhere the American soldiers went, they were received with unrestrained rejoicing and jubilation. Men, women, and children met and greeted them as heroes and saviors. The people, whether in stately mansions or in humble nipa shacks, welcomed them into their homes and gave them a taste of Filipino hospitality. Thus the long standing friendship between the American and the Filipino peoples, which had been tested in the crucible of war, was further strengthened through social contact at the advent of peace.

One decade and a half have passed since the American landing in Leyte. In the meantime events of great import have taken place in our country. For one thing, we have attained independent nationhood, with freedom to work out our own destiny as a people. In conformity with our newly acquired status, we have endeavored always to assert and defend our rights as a sovereign nation. We have determined to establish friendly relations with other nations on the basis of dignity, equality, and honor. And we have tried our best to give our own people ample opportunity to enjoy those rights which are theirs by reason of their being citizens of the Philippine Republic. All of these are manifestations of a strong spirit of nationalism that has swept and is sweeping across the length and breadth of the land. This spirit is making itself felt in the principal fields of human activity. It is in the political field, as may be seen in the desire of our people to assert our right to enjoy all the attributes of sovereignty. It is in the economic field, as evidenced by the demand of our people for a greater share of our national economy than they are now enjoying. More than ever, the conviction is gaining ground that political independence will have but little meaning without economic independence. Nationalism is also manifesting itself in various forms in the field of education and culture.

However, neither our political separation from the United States nor the upsurge of nationalism in our midst can serve to dissolve or weaken the ties of friendship and goodwill which have closely bound our two countries together for more than half a century. On the contrary, these ties will endure and will even grow stronger across the surging decades because they have been sanctified by the blood of the American and the Filipino soldiers who fought bravely side by side in defense of a common cause—the cause of democracy, and in peace these are consecrated by the solidarity of our two countries for universal freedom and universal peace.

World War Two is over. As in the case of the first world war, democracy won over totalitarianism. However, this is no time for smug complacency, for once more history is repeating itself. The first world war was fought in order to

make the world safe for democracy. The war was won, but democracy was not made safe, for a new danger soon arose which finally led to the second world war. In the same way democracy is today being menaced anew, this time by a new type of totalitarianism. As we look without and within our borders, we see insidious forces at work, threattening the safety of those institutions which we hold dear. As a result, two conflicting ideologies are today struggling for supremacy—one under which the State controls the actions and even the spiritual life of the individual, and the other under which the individual enjoys freedom of thought and action under the law.

In this struggle we have decided to cast our lot with the second. We have rejected Communism, with its materialistic theory of the nature of the human being. Instead, we have embraced democracy and its underlying principle of respect for human personality. We believe that democracy is the form of government and way of life which will serve us best. It is the form of government which our people chose when they approved the Malolos Constitution in 1899 and it is the form of government chosen by our delegates when they approved the present Constitution in 1935. Our decision, therefore, to adopt democracy as a form of government and as a way of life is clear and categorical and any attempt on the part of anyone to mislead our people by telling them that any of the policies or acts of the administration is tainted with Communism is a disservice to the nation. I strongly urge every Filipino to rally behind the government in its efforts to make democracy a living reality in our country.

My friends, it is well that on this day we pause from our labors in commemoration of that glorious event which signalized the liberation of our country. On this solemn occasion let us remember the soldiers and men who made our liberation possible; in particular, President Franklin D. Roosevelt and the Commander of the American forces, General Douglas MacArthur, whose feat will forever stand out as one of the greatest in the annals of military history. And let us not forget those of our own countrymen who, through their activities in the resistance movement, kept alive the spirit of our people until the day of their deliverance. All of them deserve the gratitude of a grateful people.

SPEECH OF PRESIDENT GARCIA AT THE UNITED NATIONS DINNER, WINTER GARDEN, MANILA HOTEL, AT 8:30 P.M. OCTOBER 24, 1959

THE thickening shadows of continued mistrust among nation's and the grave implications of recent incursions into outer space as part of the huge armament among nations, brood over the world today as it celebrates

the fourteenth anniversary of the establishment of the United Nations Organization. First conceived in hope by the Great Powers in order that peoples may know and enjoy an enduring peace, the Organization has grown slowly through years of dissension and recurrent clashes that brought the world perilously close to war. That it has so far succeeded in averting an open conflict gives rise to the renewed hope that the United Nations with its essential role as a force for mediation might yet dispel the shadows and help the world emerge into the brighter light of peace.

If one were to examine the balance sheet of the achievements of the United Nations, one is heartened by the important gains it has made in all fields of human endeavor in spite of the serious setbacks the Organization has met on political levels. More significantly it has given meaning and validity to the true concept of universal harmony: a shared kinship among the human race irrespective of barriers erected by men. This kinship arises from a common and spontaneous desire for peace, for the right to live, free from the oppressive circumstances of economic pressures, and for the preservation of human dignity.

We in the Philippines, like the rest of the small nations, have a special stake in the United Nations. Incapable of defending ourselves adequately in the event of a nuclear war, we look to the Organization to check the evil forces that threaten our way of life. Economically insufficient, we have recourse to its expanded technical assistance programmes.

Not very long ago, deteriorating political situation in Laos gave our people reason for deep concern. The explosion of what seemed at first an internal problem would have had tragic repercussions not only in the Far East but throughout the entire world as well. Without fanfare, but almost with dramatic promptness, the United Nations sent a team of investigators to the tiny kingdom and thereby halted what might have been a disastrous conflagration, as it did in the dispute between Lebanon and Jordan a few years back. Also relatively recent was the systematic despoliation of fundamental human rights in Tibet and which moved the governments of Ireland and Malaya to sponsor a resolution condemning Communist China's violation of fundamental human right of the Tibetan people. In 1956, a United Nations Expeditionary Force was dispatched to the Suez Canal to forestall what could have precipitated an open conflict among the great powers. Perhaps less positively effective in the sad case of Hungary, the United Nations, nevertheless, brought to the attention of a shocked world the inhumanity and brazen character of Communist

suppression of a people aspiring for the right to conduct their own way of existence. And by 1955, ten years after its founding, the United Nations had chalked up to its credit measures which it had taken throughout the Far East and the Middle east to ease situations that constituted a threat to international peace. It was instrumental in the solution of the dispute between the Netherlands and Indonesia. It had halted a full-scale war in Korea through the timely creation of a United Command under the United States and subsequently maintained peace in this area through the establishment of the Commission for the Unification and Rehabilitation of an independent Korea in the South. In the protracted negotiations between the Governments of India and Pakistan regarding the accession of Jammu and Kashmir, the United Nations succeeded in bringing about a temporary cessation of hostilities between the two countries. Its moral influence has, time and again, been a moderating force in heated disputes involving at one time or another, Formosa, Burma, Thailand, Cambodia, Palestine, Cyprus, and the Republic of China. In Europe and Africa, it had encouraged the sober discussions of numerous delicate and sensitive issues, including the question of race conflict in South Africa as a result of the *Apartheid,* the Tunisian and Morocco questions, and the Algerian agitation for independence.

The dynamic quality of the United Nations in developing and adopting procedures for the solution of conflicts arising in various sectors of the world has therefore counteracted the discouraging fact that so many problems still await solution.

On the economic and social levels, the Organization has been an even more potent instrument of world peace. Deeply cognizant of the importance of economic welfare in the establishment of enduring peace, the United Nations and its specialized agencies have continuously studied prevailing international commercial policies. Since 1952, the General Assembly and the Economic and Social Council have given considerable attention to international trade questions and particularly to the possibility of expanding world trade. The United Nations has, consequently, drawn attention to the farsighted wisdom of removing existing trade obstacles and the development of inter-regional commercial cooperation.

The Philippines, for one, has benefited yearly from the technical assistance programmes of the United Nations since its founding. This year, Philippine requests for such assistance in the continuance, in existing or modified forms, of U. N. and Specialized Agencies Projects amounted to $407,000. Aside from existing fellowship grants in varied

fields of study, the Philippines derives invaluable advice from U. N. technical experts among whom are those on statistical work, economic surveys, industrial development and productivity, house and town planning from the United Nations Technical Assistance Administration; experts on plant production and protection, animal production and disease control, rural welfare, agricultural economics, forestry development, land use management from the Food and Agricultural Organization; science teaching and scientific documentation from the UNESCO, civil aviation from the International Civil Aviation Organization, schistosomiasis pilot control, hygiene and public health from the World Health Organization.

As you are well aware of, the United Nations expanded program is geared towards helping under-developed countries "to strengthen their national economies through the development of their industries and agriculture, with a view to promoting their economic and political independence in the spirit of the Charter of the United Nations, and to insure the attainment of higher levels of economic and social welfare for their entire populations." Contributions to the expanded program are voluntary. Since July 1950, eighty-five governments have paid or pledged approximately 200 million dollars. For its part, the United Nations gives, partly under a program financed from its budget and partly under the Expanded Program, expert technical advice in the fields of economic development, public administration, social welfare, and the broad field of human rights to countries which ask for it. Fellowships, pilot projects, regional training, and demonstration centres and seminars are offered to train nationals of the requesting countries in these fields. Most specialized agencies also carry out additional technical assistance projects using part of their own regular annual budget to finance the projects. More than 10,000 experts of whom 6500 were provided under the Expanded Program, have been sent to 125 countries and territories on a broad variety of schemes.

United Nations Day, however, is not so much an occasion for recapitulating the achievements as it is for the reaffirmation of faith in the principles and objectives for which the Organization stands. In spite of dreary and profitless wranglings which have impeded its steady progress in providing a framework for negotiations of disputes, the United Nations has opened new vistas of international cooperation. Its growth from fifty-one to eighty-two members is not without significance. Nations have come to place greater value on United Nations membership and now actively contribute to the stream of experience, thought and culture from which the Organization draws its collective inspiration and strength.

We in the Philippines are cognizant of the overriding necessity for an effective foreign policy geared towards security and economic self-sufficiency in consonance with the principles enunciated in the Charter of the United Nations. We are equally aware that as a member of the brotherhood of nations, our best guarantees for ultimate peace lie in the harmonious blending of our ways of life with those of others, in the spirit of tolerance and comprehensive humanity. In this manner, we shall be helping in a practical manner to give clarity and meaning to the universal concept of unity that the United Nations stands for.

DECISIONS OF THE SUPREME COURT

[No. L-12287. May 29, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FORTUNATO ORTIZ and CIPRIANO LOPEZ, accused. CIPRIANO LOPEZ, accused and appellant.

CRIMINAL LAW; ROBERRY WITH RAPE; MAXIMUM PENALTY WHEN JUSTIFIED.—Where the accused-appellant in written statement admitted he was able to rape one of the women in the course of the commission of the robbery although he did not say whether it was M or G and the act was attended by the aggravating circumstances of dwelling, nighttime, and the aid of armed men because the robbers were armed with several firearms, including a Japanese bayonet, and there was no mitigating circumstance to offset the same, the appropriate penalty to be imposed upon the accused is that of the maximum degree namely *reclusión perpetua*.

APPEAL from a judgment of the Court of First Instance of Isabela. Arranz, *J*.

The facts are stated in the opinion of the Court.

Counsel de oficio Vicente Roco, Jr. for the accused and appellant.

Assistant Solicitor General Esmeraldo Umali and *Solicitor Florencio Villamor* for the plaintiff and appellee.

MONTEMAYOR, *J.:*

Cipriano Lopez and Fortunato Ortiz *alias* Adong, together with others were accused of robbery with rape in the Court of First Instance of Isabela. The case was dismissed against two of them for alleged insufficiency of evidence and against several others for the reason that they were still at large. So, the trial was held only against Lopez and Ortiz, both of whom were later found guilty and sentenced by the trial court to an indeterminate sentence of not less than 10 years, 2 months and 21 days of *prisión mayor* nor more than 18 years, 8 months and 1 day of *reclusión temporal,* with the accessories of the law, to indemnify jointly and severally Matea Santiago and Gregoria Salvador, each in the sum of ₱500, for the rape committed on them, and the spouses Victoriano Manuel and Matea Santiago and the couple Ricardo Doctolero and Gregoria Salvador in the sum of ₱203.60 and ₱191.21, respectively, for the value of the things taken from their houses and the palay and rice taken from their granaries, and to pay the costs. The two accused appealed the decision to the Court of Appeals. Pending appeal therein, Ortiz moved for the withdrawal of his appeal and

his motion was granted by resolution of June 26, 1953, thereby leaving Lopez as the lone appellant.

After studying the case, the Court of Appeals, in a resolution dated February 19, 1957, made a detailed narration of the facts of the case, found that the crime of robbery with rape had really been committed by Lopez and Ortiz with the attendance of the aggravating circumstances of nighttime, dwelling, and with the aid of armed men, and as against Lopez, with the additional aggravating circumstance of recidivism, without any mitigating circumstances to offset the same, concluding that the imposable penalty was the penalty provided for in Article 294, paragraph 2 of the Revised Penal Code, in its maximum degree, namely, *reclusión perpetua,* and consequently, certifying the appeal to us.

After a careful review of the case, we find the following facts to have been fully established: In the month of April, 1950, there was a group of houses in the barrio of Batal, Santiago, Isabela, one occupied by Victorio Manuel and his wife Matea Santiago; in another lived the couple Ricardo Doctolero and Gregoria Salvador, and a farm hand named Modesto Vicente. On the night of April 8, 1950, while Victorio and his wife Matea and their minor children were asleep, two armed men broke into their home and by force and intimidation, took Victorio down the house and at some distance therefrom, tied him to a post, where other malefactors guarded him. Then one of the intruders returned to the house, demanded money from Matea who answered that they had none. After asking her if she has just given birth, and upon answering in the affirmative, he brazenly expressed his desire to have sexual intercourse with her. She pleaded with him, asking him to spare her, specially because of her condition, but in answer to her pleas, he snatched the infant she held in her arms, and violently pushed her. She fell down on her back and thereafter, he placed himself on top of her and satisfied his lust. Thereafter, he went downstairs and another malefactor came up, opened the couple's trunk and took therefrom a woolen blanket and two pairs of pants, which he proceeded to deliver to another companion who stood on the stairway and whom he addressed as "Sergeant". After doing this, he returned to the room and placed himself on top of Matea for the purpose of coitus, but before he could consummate the act, the one addressed as "Sergeant" entered the room and ordered him out of the house. Then he, the "Sergeant", after telling Matea that he wanted to have sexual intercourse with her, lifted her skirt twice, but in both instances, she put her dress down, pleading with him, but the man persisted, lifted her skirt a third time and

trained his flashlight on her genital organs, after which, through intimidation, he succeeded in having sexual intercourse with her. However, in focussing the flashlight on her, Matea could, by its light, recognize him as Adong, the nickname of Fortunato Ortiz, whom she and her husband well knew. Thereafter, Adong went downstairs and another malefactor came up the house, ransacked the trunk and took therefrom a blanket, khaki cloth, a flashlight, and a necklace, and then intimated his desire to have carnal knowledge of Matea, but because of her pleas, he desisted and went away with the loot. Thereafter, and when Matea felt that the robbers had left the premises, she went to the kitchen to urinate, and from there, she saw one of them carrying their palay from their granary, about ten meters away. From the place where Victorio was tied, he could estimate the number of the robbers to be about ten.

The same malefactors next entered the neighboring house of the spouses Ricardo Doctolero and Gregoria Salvador, where at gun point, they ordered Ricardo Doctolero and the farm hand Modesto Vicente down the house, where they were also tied. One of the robbers remained in the house and demanded from Gregoria money and jewelry. She answered that they had none, except a pair of earrings and a ring, but begged that he should not take them away. He did not insist but instead told her that he wanted to have coitus with her. She refused, at the same time pleading that she was in an advanced state of pregnancy for she was already eight months on the family way. Deaf to her plea, he warned her that if she did not accede to his wishes, he would punch her on the belly; and realizing the consequences of such a blow, not only to herself but to her expected baby, she reluctantly allowed him to ravish her. Two other robbers came up the house and compelled Gregoria to submit to sexual intercourse, one after the other. Then came up still another malefactor, also bent on having coitus with her. Gregoria said that she was too tired and exhausted to resist ravishment by him but she recognized this fourth rapist as the same Fortunato Ortiz *alias* Adong, who figured in a similar bestial act in the neighboring house of Matea not long before. From the house of Gregoria, the robbers were able to get a pair of sharkskin pants and another pair of khaki pants, two cavans of rice and two packages of safety matches, and from the granary, four cavans of palay.

The following morning, despite the warning and threats of the malefactors, the victims of the robbery and rape made a report, mentioning the name of Ortiz, first to the barrio lieutenant, and later to the police authorities

of Santiago. Chief of Police Regino Dancel commendably made a thorough investigation and came to learn that Fortunato Ortiz alias Adong was then being detained by the members of the Philippine Army with Headquarters in Echague, in connection with a robbery committed in another town. He went to Echague and there found under detention not only Ortiz but Cipriano Lopez, equally charged with the robbery above-mentioned. He questioned the two men long and patiently and was rewarded with their confession of participation in the robbery and rape committed in the homes of Fortunato and Matea and Ricardo and Gregoria in the barrio of Batal, Santiago. The confessions were reduced to writing and ratified and signed by Ortiz and Lopez before the Justice of the Peace. After the two defendants had been formally charged with robbery with rape, in the course of the preliminary investigation conducted by the Justice of the Peace, the two defendants made statements in answer to questions propounded by said Justice of the Peace which were also reduced to writing. These statements form part of the evidence.

There is absolutely no question about the participation of Ortiz and Lopez in the commission of the crime of robbery with rape. Lopez in his written statement even admitted that he was able to rape one of the women, although he did not say whether it was Matea or Gregoria. The commission of the crime was attended by the aggravating circumstances of dwelling, nighttime, and the aid of armed men because the robbers were armed with several firearms, including a Japanese bayonet. There was no mitigating circumstance to offset the same, so that the penalty should have been imposed by the trial court in its maximum degree, namely, *reclusión perpetua*. Unfortunately, Ortiz who was more smart and shrewd than his co-appellant Lopez, and realizing this error committed in his favor by the lower court, lost no time in withdrawing his appeal in the Court of Appeals.

A reappraisal of the values of the things taken from the houses and granaries of Victorio Manuel and Matea Santiago and of Ricardo Doctolero and Gregoria Salvador shows that the former lost ₱198.60 and the latter, ₱153.90. We agree with the Solicitor General that the indemnity to be given to the two unfortunate women, Matea and Gregoria, should be increased. We fix the amount at ₱2,000.00 each. And as to the penalty, it should be increased to *reclusión perpetua*. It is of course to be understood that this modification of the appealed judgment applies only to Cipriano Lopez.

Again we repeat that with the erroneous application of the penalty by the trial court on Fortunato Ortiz,

which error, by the withdrawal of his appeal in the Court of Appeals, we are now in no position to correct, there was evidently a miscarriage of justice, since as between the two accused, Ortiz is, clearly the more guilty. But the consequences of the error and the miscarriage of justice may be minimized if the Department of Justice and the prison authorities refuse to release him upon his service of the minimum prison sentence of ten years, but require him to serve the maximum, subject of course, to regulations about allowance for good conduct.

With the modifications above-stated, the appealed decision is hereby affirmed, with costs.

Parás, C. J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Judgment affirmed with modifications.

[No. L-10020. December 29, 1958]

ANTONIO ALACAR, petitioner and appellee, *vs.* THE CITY MAYOR, ET AL., respondents and appellants

1. OFFICERS; MEMBER OF POLICE FORCE; SUSPENSION; REINSTATEMENT IF ADMINISTRATIVE CASE NOT DECIDED WITHIN SIXTY DAYS; EXCEPTION.—Pursuant to Section 3 of Republic Act No. 556, if during the period of sixty days the case shall not have been decided finally, the accused, if he is suspended shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision "unless the delay in the disposition of the case is due to the fault, negligence, or *petition of the accused,* in which case the period of the delay shall not be counted in computing the period of suspension."
2. ID.; ID.; APPEAL TAKEN MAY PREVENT REINSTATEMENT.—In the case at bar, petitioner was suspended from office on July 26, 1955 and was found guilty by the city council, after due investigation on August 31, 1955, or within the period of sixty days. From this decision he appealed. HELD: The appeal taken by the petitioner to the Commissioner of Civil Service from the decision of the city council constitutes a delay which may prevent his reinstatement since the same is caused by his own voluntary act.

APPEAL from a judgment of the Court of First Instance of Baguio City. De Veyra, *J.*

The facts are stated in the opinion of the Court.

Pablo C. Sanidad and *Hermenigildo S. Cruz* for petitioner and appellee.

Special Counsel Dionisio C. Claridad for the respondents and appellants.

BAUTISTA ANGELO, *J.:*

Antonio Alacar was a member of the police force of Baguio City, but in view of a complaint for misconduct filed against him, he was suspended from office on July 26, 1955. After due investigation, the City Council found him guilty as charged on August 31, 1955. Within the period prescribed by Republic Act 557, Alacar appealed to the Commissioner of Civil Service. Since the 60-day period provided for in said Act for his reinstatement expired on September 26, 1955, Alacar requested for his immediate reinstatement. He was reinstated but with the proviso that pending final termination of his appeal he shall not be paid his salary until he has clarified his right to it after the case. Subsequently, however, this order of reinstatement was revoked and he was considered dismissed from the service. Hence he initiated the present petition for mandamus in the Court of First Instance of Baguio City praying for his reinstatement with back pay until his administrative case shall have been finally terminated.

The trial court, after hearing, rendered decision granting the petition and ordering respondents to reinstate peti-

tioner immediately paying him his salary from September 26, 1955, but the damages prayed for were not granted on the ground that respondents acted on the matter in good faith. Respondents interposed the present appeal.

The question to be determined is whether petitioner is entitled to reistatement pending final determination of his administrative case which was taken by him on appeal to the Commissioner of Civil Service.

Section 3 of Republic Act No. 557 provides:

"SEC. 3. When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided."

It would appear that if during the period of sixty days the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision. But it would also appear that, the reinstatement would follow "unless the delay in the disposition of the case is due to the fault, negligence, or *petition of the accused,* in which case the period of the delay shall not be counted in computing the period of suspension." The question that now arises is whether the appeal taken by petitioner to the Commissioner of Civil Service from the decision of the city council constitutes a delay which may prevent his reinstatement since the same is caused by his own voluntary act.

This question has already been resolved in the affirmative in the case of Martinez *vs.* Municipal Mayor of Labason, et al., G. R. No. L–11868, April 30, 1958, wherein this Court made the following pronouncement:

"It will be noticed however, that on the sixtieth day the council voted by resolution to remove the petitioner from his position. Such resolution would have decided the matter finally if petitioner had not filed a notice of appeal to the Commissioner of Civil Service. Therefore, his case was not finally disposed of *because of his own* voluntary act of appealing, which amounted to a *petition* for review. Such *petition* excused any delay in the definite disposition of the charges.

"Indeed, it would be contrary to the spirit of mandamus proceedings to compel reinstatement of a suspended officer after the latter had been found guilty and dropped from the service by the competent official body. Such suspended official, it may be said, did not have a clear legal right (to return) enforceable by man-

damus. And the court's discretion should not be exercised in a way injurious to public interest; nor should mandamus issue where it would not promote substantial justice."

In this case, petitioner was suspended from office on July 26, 1955 and was found guilty by the city council, after due investigation, on August 31, 1955, or within the period of sixty days. The case therefore would have been finally decided had not petitioner appealed to the Commissioner of Civil Service. Hence his case was not finally decided because of his voluntary act and this constitutes a delay which prevents his reinstatement.

Wherefore, the decision appealed from is reversed, with costs against petitioner.

Parás, C. J., Bengzon, Padilla, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

MONTEMAYOR, *J.,* concurring and dissenting:

Section 3 of Republic Act No. 557 in express and clear terms provides that the suspension of any member of the provincial guards, city police and municipal police, facing charges, may not be longer than 60 days; that if during said period of 60 days the case has not been decided finally, the accused, if suspended shall ipso facto be reinstated in office, without prejudice to the continuation of the case until its final determination, unless the delay in the disposition of the case is due to the fault, negligence or petition of the accused, in which case the period of delay shall not be counted in computing the period of suspension. The majority opinion holds that the delay in the final disposition of the case should be laid at the door of the accused-petitioner. I disagree.

The delay is due to the appeal taken by him to the Commissioner of Civil Service, which appeal is clearly provided for and guaranteed in section 2 of the said Republic Act 557. It is a remedy available not only to the policeman suspended, but also to the provincial governor, city mayor or municipal mayor as the case may be who made the suspension. Surely, the delay due to the final determination of the case by the Commissioner of Civil Service cannot be imputed to the party availing himself of the remedy.

The clause being applied is clear and unmistakable—"unless the delay in the disposition of the case is due to the *fault, negligence* or *petition* of the accused." The appeal to the Commissioner of Civil Service, certainly, is neither a *fault* nor *negligence* of the petitioner herein. Neither did he *petition* for any suspension or postponement of the disposition of the case. All that he did was to avail himself and follow the remedy and procedure outlined by the law itself, that of appeal. May any party

in any case, judicial or administrative, be penalized for taking an appeal? Decidedly not. On the contrary, bona-fide appeals are encouraged so as to correct any errors that might have been committed, so that the party feeling himself or itself aggrieved may have the satisfaction of having exhausted all the remedies afforded by law.

The case might be different if the appeal is clearly frivolous, intended merely to delay the final determination of the case. However, the record does not show, neither does the majority opinion make any declaration or even a hint, that the appeal taken by the petitioner in this case was frivolous and done in bad faith.

Furthermore, such delay, as a consequence of the appeal cannot possibly be long, for the reason that the period within which to appeal under Section 2 of the said Republic Act 557 is fixed at 15 days, and the provincial governor, the city mayor or the municipal mayor, as the case may be, is required within 20 days from receipt of the appeal to forward the records of the case to the Commissioner of Civil Service; and the Commissioner is required to render decision therein within a reasonable time.

But in view of the result of the voting in this case, I would concur in the majority opinion with the understanding that should the Commissioner of Civil Service finally decide the case in favor of the petitioner, the latter should immediately be reinstated and that he be paid the salary corresponding to the whole period of suspension.

Judgment reversed.

[No. L-8564. April 23, 1958]

FRANCISCO PELAEZ, deceased, substituted by DOLORES VDA. DE PELAEZ, plaintiff and appellant, *vs.* LUZON LUMBER COMPANY, defendant and appellee.

COURTS; JURISDICTION; COMPENSATION UNDER WORKMEN'S COMPENSATION ACT; WORKMEN COMPENSATION COMMISSION.—Under Republic Act No. 772, employee's claim for sick and vacation leave of absence, medical aid and actual and compensatory damages and overtime pay should be filed with the Workmen's Compensation Commission, which has exclusive jurisdiction to hear and decide said claim (see Castro *vs.* Sagales, G. R. No. L-6359, December 29, 1953.)

APPEAL from a judgment of the Court of First Instance of Manila. Zulueta, *J.*

The facts are stated in the opinion of the Court.

Gelasio L. Dimaano, for plaintiff and appellant.
Albino & Albino, for the defendant and appellee.

CONCEPCIÓN, *J.:*

This is an ordinary civil action for the recovery of the aggregate sum of ₱36,667.81, consisting of the following items:

(1)	For overtime pay	₱9,578.37
(2)	For sick and vacation leave of absence with pay	756.00
(3)	For medical treatment	3,000.00
(4)	For actual or compensatory damages	20,000.00
(5)	For attorney's fees	3,333.44

by way of compensation allegedly due plaintiff Francisco Pelaez—who contracted pulmonary tuberculosis and later died—first as laborer, and, then, as watchman and driver of defendant Luzon Lumber Company, from December 7, 1946 to May 7, 1952. The complaint was filed with the Court of First Instance of Manila on August 15, 1952.

Defendant answered denying any and all liability in favor of the plaintiff, upon the ground that the former had already paid the latter everything due to him, that he had never rendered any overtime services, and that he had voluntarily quit his job, and assailing the jurisdiction of the Court of First Instanc eof Manila to hear and decide the case, the claim involved therein being allegedly within the exclusive jurisdiction of the Workmen's Compensation Commission.

After appropriate proceedings, said court rendered a decision finding that it had no jurisdiction to entertain plaintiff's claim for sick and vacation leave of absence, medical aid and actual and compensatory damages, and dismissing his claim for overtime pay, upon the ground of insufficiency of evidence, without special pronouncement as to costs. Plaintiff appealed from this decision to

the Court of Appeals, which forwarded the records to this Court, the jurisdiction of the court *a quo* being involved in the appeal.

With respect to this question, appellant contends that, despite section 46 of Act No. 3428, as amended, by Republic Act No. 772, reading:

"The Workmen's Compensation Commissioner shall have *exclusive* jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court, in the same manner and in the same period as provided by law and by rules of court for appeal from the Court of Industrial Relations to the Supreme Court." (Italics ours.)

the court *a quo* had jurisdiction to hear and decide his claim for sick and vacation leave of absence, medical aid and actual and compensatory damages, his cause of action in relation thereto having accrued before June 20, 1952, when said Republic Act No. 772 was approved and became effective. A similar pretense was rejected by this Court in Castro *vs.* Sagales, L–6359 (decided on December 29, 1953), and we do not find sufficient reasons to depart from the view adopted in our decision therein, from which we quote:

"Republic Act No. 772 effective June 20, 1952 conferred upon the Workmen's Compensation Commission 'exclusive jurisdiction' to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to this Supreme Court. Before the passage of said Act demands for compensation had to be submitted to the regular courts.

* * * * * * *

"It is true that the right arises from the moment of the accident, but such right must be declared or confirmed by the government agency empowered by law to make the declaration. If at the time the petition for such declaration is addressed to the court, the latter has no longer authority to do so, obviously it has no power to entertain the petition. *Republic Act No. 772 is very clear that on and after June 20, 1952 all claims for compensation shall be decided exclusively by the Workmen's Compensation Commissioner, subject to appeal to the Supreme Court. This claim having been formulated for the first time in August, 1952 in the Court of First Instance of Bulacan, the latter had no jurisdiction, at that time, to act upon it.* No constitutional objection may be interposed to the application of the law conferring jurisdiction upon the Commission, because the statute does not thereby operate retroactively; it is made to operate upon claims *formulated after* the law's approval. * * * 'A retrospective law, in a legal sense, is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect of transactions or considerations already past. Hence, remedial statutes, or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the

general rule against the retrospective operation of statutes.' (50 Am. Jur., p. 505).

* * * * * * *

"It is argued that Republic Act No. 772 should not be enforced as to accidents happening before its approval, because it has introduced changes affecting vested rights of the parties. Without going into details, it might be admitted that changes as to substantive rights will not govern such 'previous' accidents. *Yet here we are dealing with remedies and jurisdiction which the Legislature has power to determine and apportion.* And then it is hard to imagine how one litigant could acquire a vested right to be heard by one particular court, even before he has submitted himself to that particular court's jurisdiction." (Italics ours.)

It is urged, however, that "sick and vacation leave of absence are not specially provided in the Workmen's Compensation Act;" that "actual and compensatory damages is provided for in Chapter 2 of the Civil Code of the Philippines;" that "medical aid, although provided in section 13, Workmen's Compensation Act, is also provided in Act 3961, Commonwealth Act 324 and Republic Act No. 46"; and that "the Workmen's Compensation Law cannot and should not be interpreted to mean that labor can no longer invoke the provisions of the Civil Code * * * and other labor laws."

Apart from the fact that the provisions of the Workmen's Compensation Act have been *specifically invoked* in paragraph 16 of appellaint's complaint, his contention is refuted by the first paragraph of section 5 of said Act, which provides:

"*Exclusive right to compensation.*—The rights and remedies granted by this Act to an employee by reason of a personal injury entitling him to compensation *shall exclude all other rights and remedies* accruing to the employee, his personal representatives, dependents or nearest of kin against the employer *under the Civil Code and other laws,* because of said injury." (Italics ours.)

It should be noted that the right to compensation of employees, pursuant to the foregoing section, was exclusive in nature since the *original* Workmen's Compensation Act (No. 3428). At any rate, although we have held that, under Commonwealth Act No. 103, the Court of Industrial Relations could require an employer to grant its employees and laborers vacation and sick leave with pay, if the employer's financial condition justify it (Leyte Land Transportation Co. *vs.* Leyte Farmers' Laborers' Union, L–1377, May 12, 1948; Dee C. Chuan & Sons *vs.* Court of Industrial Relations, L–2548, January 28, 1950) (see, also, Sunripe Coconut Workers Union *vs.* Sunripe Coconut Products, CIR No. 33–V), there has never been any order or decision of said Court imposing such obligation upon defendant herein, and the ordinary courts of justice have, under our laws, no authority to assume the jurisdiction thus vested in the Court of Industrial Rela-

tions by Commonwealth Act No. 103. What is more, the work cited by appellant in support of his pretense (Labor Laws by Francisco) states that "with the abolition of the court's general jurisdiction over labor disputes", upon the enactment of Republic Act No. 875, said power of the Court of Industrial Relations "has also been *abolished*", in the absence of certification by the President, pursuant to section 10 of the latter act (The Law Governing Labor Disputes in the Philippines, by Vicente J. Francisco, Vol. I, p. 166).

It is next urged that:

"The lower court erred in denying plaintiff-appellant's claim for overtime pay and in dismissing plaintiff-appellant's claim." (2nd assignment of error, Appellant's Brief, p. 25, Record.)

It appears that the evidence for appellant, on this point, consisted of his testimony and that of his wife Dolores Pelaez, which were contradicted by the testimony of Tan Pui Koa and Sy Kiat, appellee's assistant cashier and paymaster, respectively, and that His Honor, the trial Judge, was not satisfied with said evidence for plaintiff-appellant, for the reasons stated in the decision appealed from, in the following language:

"* * * What the Court has to decide finally is whether plaintiffs had really been working daily even on nightshifts for more than twelve hours continuously as he has alleged under oath in his complaint and as he has testified during the trial or whether as set up by defendant by way of special defense, plaintiff's regular shift has always been 8 hours only and that whenever he rendered overtime service he was duly paid for it.

"In this connection, in consonance with the social justice program of the government, such as the Court sympathizes with the cause of plaintiff because he is a laborer, the Court deeply regrets to state that the plaintiff has failed to satisfactorily convince the Court of his pretensions.

"To begin with, if it were really true that plaintiff had been rendering overtime work since December 7, 1946 until May, 1952, he would not have continued rendering such overtime service without receiving the corresponding pay and instead allowed his claim to accumulate to thousands without the expectation of collecting the same.

"In the second place, it is to be noted, that plaintiff during the trial first claimed that he never received any overtime pay yet, when confronted with his several overtime receipts he had to admit that he collected and received overtime pay more than once.

"Finally, the Court cannot help but doubt plaintiff's claim for overtime because in his complaint, plaintiff alleged under oath that from December 7, 1946 to March 31, 1947, he worked from 6:00 p.m. to 6:00 a.m., but during the trial he declared that he used to work at 7:00 o'clock a.m. up to 7:00 o'clock p.m. Needless to state, plaintiff's testimony, contradicted as it is by his own verified complaint, cannot be the basis of an award for overtime pay in favor of plaintiff and against defendant whose evidence on the matter is clear and free from contradictions. Indeed, plain-

tiff's contradiction covers only the period from December 7, 1946 up to March 31, 1947, but the doubt engendered in the mind of the Court extends to plaintiff's whole claim."

Upon review of the record we do not feel justified in disturbing this finding of the lower court.

WHEREFORE, the decision appealed from is hereby affirmed, without special pronouncement as to costs.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Judgment affirmed.

[G. R. No. L–11177. October 30, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CIRILO MONROY *alias* CIRILO SARTE and CELERINO IDICA, *alias* MARCELINO, defendants and appellants.

CRIMINAL LAW; CONSPIRACY, HOW DETERMINED AND WHEN IT ARISES; PREMEDITATION COMPARED.—Conspiracy may be inferred from the acts of the accused themselves when such acts point to a joint purpose and design (see Peo *vs.* Upao-Moro; G. R. No. L–6771, May 28, 1957, and cases cited therein.) Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (U.S. *vs.* Gil. 13 Phil 330), conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime, committed by anyone of them. (Peo *vs.* Absina et al. G. R. No. L–7849, December 24, 1957).

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Antonio, *J.*

The facts are stated in the opinion of the Court.

Solicitor General Ambrosio Padilla and *Solicitor Pacífico P. de Castro* for the plaintiff and appellee.

Counsel (de oficio) *Servillano de la Cruz* for defendant and appellant.

REYES, J. B. L., *J.:*

Cirilo Monroy (*alias* Cirilo Sarte) and Celerino Idica (*alias* Marcelino Idica) were charged and convicted in the Court of First Instance of Ilocos Sur of the crime of murder defined and penalized under Article 248 of the Revised Penal Code. Each was sentenced to suffer the penalty of *reclusion perpetua,* with the acessory penalties prescribed by law; to indemnify the heirs of the deceased Elpidio Agdeppa in the amount of ₱6,000, and to pay the costs. Against this judgment, both appealed to this Court. Later, however, we granted permission for Celerino Idica's appeal to be withdrawn (Resolution of September 19, 1958). Accordingly, the judgment of the lower court, as to him, was entered on the 23rd of the same month for execution.

We believe that the records of this case establish that on the night of October 10, 1954, Cirilo Monroy, Celerino Idica and Guillermo Lacuesta, all residents of barrio Jordan, Sinait, Ilocos Sur, went to barrio Nagbalawartian of the same municipality at the store-residence of one Eladio Fiesta, for Idica wanted to make payment for an article he previously bought on credit from Fiesta. Upon arriving at the place, the trio met, aside from some immediate members of Fiesta's family, other persons, among

whom were their barrio-mates Jose Sarte and the deceased Elpidio Agdeppa. They stayed there for about two hours, spending the time, talking and drinking "basi" (a native drink). It was about 11:00 o'clock that evening when they, this time together with the deceased Agdeppa and Jose Sarte, started for home.

On their return journey, they passed through the usual trail by the bank of a small river. Nearing the house of one Maria Duran, Elpidio Agdeppa suggested to Cirilo Monroy, Celerino Idica and Guillermo Lacuesta (Jose Sarte was walking a little ahead of them) that they abduct the daughter of Maria Duran. The trio, apparently, did not agree to this proposition for some reasons known only to them. Their refusal must have infuriated Agdeppa for he was alleged to have said, "If you do not agree, beware", and then proceeded on his way, turning his back to the others.

About two minutes later, the assault against the deceased began. On what transpired during these two minutes preceding the attack, Guillermo Lacuesta (a co-accused himself who was discharged to become a state witness) declared that Celerino Idica clandestinely proposed to the other two (Monroy and Lacuesta) that they injure Agdeppa. To this scheme, Cirilo Monroy readily agreed, while Lacuesta refused to accede. Their position at this precise moment was stated to be thus: Jose Sarte, as usual, was walking ahead, closely followed some distance behind by Agdeppa. Celerino Idica, who was obliquely behind Agdeppa's right, then picked up a fist-sized stone and hurled it at the deceased hitting him on his right cheek. Agdeppa was seen to have instinctively covered his face with both hands upon receiving the blow. While in that position, Idica and Monroy continued pelting him with stones until Agdeppa collapsed and fell to the ground face downward. Seeing this, Idica approached the fallen Agdeppa, snatched from his waist a sharppointed bolo, and with it stabbed the deceased several times, while Monroy kept hitting him with stones. Believing that their victim was already dead, the duo dragged his body to the edge of the river, helped by Lacuesta. Celerino Idica then went to the house of Maria Duran, took a bucket of water and with it, tried to wash away the blood stains on the scene of the crime. Thereafter, they left.

While the foul play was in progress, José Sarte was so overcome with fear that he fled from the group upon seeing the deceased collapse.

The violent death of Elpidio Agdeppa on the night of October 10, 1954 is not questioned. The necropsy report, confirmed by the testimony of doctor Avelino, leaves no doubt that Agdeppa died as the result of a homicidal

attack. With the *corpus delicti* thus independently established, the voluntary confessions of appellant Monroy and his companion Idica (who withdrew his appeal) fully support the conviction, specially because they confirm the testimony of eyewitnessess Guillermo Lacuesta and Jose Sarte (Peo *vs.* Quianzon, 62 Phil. 162; Peo *vs.* Bantagan, 54 Phil. 834). The confessions themselves, Exhibits D and E, recite as follows:

"When we were on the way near the house of Maria Duran, Marcelino Idica struck Elpidio Agdeppa with a stone on the right side of his face, then as Elpidio was falling to the ground, I struck him also with a stone twice on the head. Then Marcelino Idica grabbed the bolo of Elpidio Agdeppa and stabbed Elpidio several times on the back, after which, I also stabbed Elpidio on the back once. Casimiro (Lacuesta) also struck Elpidio Agdeppa on the head several times with stones." (Sworn declaration of *Cirilo Monroy,* Exhibit "D")

"When we passed thru the Sinait river I picked up two (2) fist-size stones and on the way I threw one to the right jaw of the late Elpidio Agdeppa and when he stumbled I again threw the other stone to the back upper part of bis head. Thereafter, I took hold of the bolo of the late Elpidio Agdeppa placed on his hip and strucked his back twice. After that Cirilo Sarte threw another stone on the head of Elpidio Agdeppa and stabbed him also. Guillermo Lacuesta also threw stone on the head of Elpidio Agdeppa." (Sworn declaration of *Celerino Idica,* Exhibit "E")

It is but to be expected that the defense should assail the voluntariness of these confessions, although they were signed and sworn to before the Justice of the Peace of Sinait on the day following the incident, i.e, on October 11, 1954. It is contended that the confessions were made because of fear of maltreatment by the Chief of Police. This claim, however, is unacceptable. No evidence was presented to show what excited this purported fear, the defense relying solely on the naked statements of both accused that they were afraid. On the other hand, the disinterested testimony of the Justice of the Peace, Adelaida C. Salom, belies any irregularity in the manner they were made. She categorically declared that before the affiants signed their names, she apprised them of their constitutional rights and warned them of the fatal consequences of their admissions; and that she read the contents of the affidavits to them, translating it from English to their native dialect (Ilocano). The affiants, she continued, even told her that "they were just telling the whole truth and nothing but the truth." This testimony, coupled with the substantial uniformity of both declarations as to the details in the commission of the crime, which only the accused knew and could relate in the way it was given, more than convinces us of their veracity. (Cf. People *vs.* Andallo and Cardona, G. R. No. L–9173, May 29, 1957)

The defense assails the lower court's finding of conspiracy between the two accused, arguing that the interval between the idea of injuring the deceased and the time the act was committed was too brief (two minutes more or less) for them to have come into conspiracy; and that the absence of evident premeditation, as found by the trial court, substantiates this view.

This Court has repeatedly decided that conspiracy may be inferred from the acts of the accused themselves when such acts point to a joint purpose and design (see People *vs.* Upao-Moro, G. R. No. L–6771, May 28, 1957, and cases cited therein). Unlike in evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences of his intended deed (U.S. *vs.* Gil, 13 Phil. 530), conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime committed by anyone of them (People *vs.* Abrina, et al, G. R. No. L–7849, December 24, 1957). Here, the accord between the accused is evidenced by their concerted assault upon their victim, rendering each assailant liable for the entire consequences of the unlawful act.

At any rate, it appears that appellant himself inflicted some of the head injuries, by pelting stones on the victim before and during the stabbing, and since any one of the lesions (excepting that inflicted by Idica on the right side of the face) could have caused the death of Elpidio Agdeppa, according to the Municipal Health Officer, Dr. Jose B. Avelino, Monroy himself can be deemed guilty as principal by direct participation. Appellant's own confession is to the effect that he struck the deceased with stones twice on the head, and that he stabbed him once at the back (see pertinent portions of Exhibit "B"; and also Exhibit "E", *supra*). The gravity of such actions bars him from invoking the mitigating circumstance of not having intended to commit so grave a wrong as that committed.

The existence of treachery is attested by the suddenness of the attack that caught the deceased Agdeppa (who was walking ahead of the agressors) completely unaware, deprived of any chance to ward off the assault. Guillermo Lacuesta and Jose Sarte testified that when Idica stoned Elpidio Agdeppa for the first time, the latter faced forward, while the hurler was a few paces behind and to the right of Agdeppa. The location of the injury on the face, as shown by the medical certificate (Exhibit "C") and

as graphically illustrated in Exhibit "C–1", clearly indicates that the assailants weer diagonally behind the victim when the attack began.

We find no error in the penalty imposed by the lower court. The victim's mere utterance "if you do not agree, beware", without further proof that he was bent upon translating his vague threats into immediate action, cannot be considered as sufficient provocation or threat immediately preceding the act. "Sufficient" provocation or threat has been held to be one which is adequate to excite a person to commit the wrong charged, and which must, accordingly, *be proportionate to its gravity* (see People *vs.* Nabora, 73 Phil. 434).

WHEREFORE, the appealed judgment should be, and hereby is, affirmed. One-half of the costs shall be borned by appellant Monroy.

SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepción, and *Endencia, JJ.,* concur.

Judgment affirmed.

DECISIONS OF THE COURT OF APPEALS

[No. 20517–R. May 7, 1959]

MARUTAS BAKABAK, plaintiff and appellant, *vs.* FORTUNATO JUANICO, ET AL., defendants and appellees

JUDGMENTS; CONSTITUTIONAL REQUIREMENT THAT A DECISION SHOULD STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED; SUBSTANTIAL COMPLIANCE SUFFICIENT.—The constitutional provision that "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based," does not require that all the allegations and issues contained in the pleading and the testimonies of all the witnesses at the trial be summed up and that the court should pass upon all declarations, theories and questions. Where a case is simple and one important issue would completely determine all other issues raised therein as well as the rights of the parties thereunder, a court of record is justified in deciding the case upon that singular and fundamental issue and to make finding of facts, no matter how short, on that determinative issue alone.

APPEAL from a judgment of the Court of First Instance of Iloilo. Pelayo, *J.*

The facts are stated in the opinion of the Court.

Felipe Ysmael, for plaintiff and appellant.

Venancio C. Bañares & Daniel Osumo, for defendants and appellees.

DE LEON, *J.:*

The plaintiff alleges that he is the owner of a parcel of land, located at sitio Pangalatcaton, barrio La Paz, Banate, Iloilo, with an area of 57 hectares and 90 ares, and that beginning January, 1948, the defendants forcibly occupied about 47 hectares thereof. The defendants, Fortunato Juanico and Cristeta Bactung, deny the plaintiff's claim, maintaining that they and their predecessors in interest are the owners of the lands covered by tax declarations Nos. 2351 and 2380, covering 247,442 and 436.140 square meters, respectively, for over 50 years. The lower court found the complaint to be unmeritorious, and so dismissed the action, as well as the counterclaims, with costs against plaintiff.

In this appeal, the plaintiff's counsel has raised three issues, to wit: (1) whether the trial court has made a finding of facts in its decision, in conformity with Article 8, Section 12, of the Philippine Constitution; (2) whether the land described in the complaint is the same land which is in the admitted possession of the defendants; and (3) whether the evidence of record fairly preponderates in favor of the defendants-appellees.

A portion of the decision appealed from reads as follows:

"* * * He (plaintiff) avers that in January, 1948, defendants, by means of force, occupied about 47 hectares thereof. At the trial, he testified that the aforesaid property was one of the several parcels of land which his mother had conveyed to him without consideration under a Deed of Sale (Exhibit C) which was executed September 4, 1954. He further testified that when he purchased the property from his mother the portion in litigation had already been in the possession of the defendants. Said exhibit does not however say anything about the property mentioned in the complaint or the portion thereof that is in litigation. There is nothing in Exhibit C which shows that plaintiff's mother was in possession of the aforesaid property. Plaintff's contention that his parents had been in possession of the property is not sustained by the evidence.

"The preponderance of evidence shows that a portion of the land in litigation is and was occupied by Fortunato Juanico and another portion by Cristeta Bactung; that these two defendants have been in possession of their respective portions personally and thru their predecessors in interest since time immemorial; that they have introduced improvements thereon and that they are the exclusive possessors thereof."

Counsel for the appellant contends that the above-quoted portion of the decision does not meet with the requirement of our Constitution that "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based." This contention is untenable. We believe the afore-quoted provision of our Constitution does not require that all the allegations and issues contained in the pleadings and the testimonies of all the witnesses at the trial be summed up and that the court should pass upon all declarations, theories and questions. Where a case is simple and one important issue would completely determine all other issues raised therein as well as the rights of the parties thereunder, a court of record is justified in deciding the case upon that singular and fundamental issue and to make a finding of facts, no matter how short, on that determinative issue alone. In the instant case, the gist of the plaintiff's cause of action and the defendants' defenses are clearly and concisely presented in the appealed judgment, from which the court a quo has drawn the following equally short and clear finding of facts definitely fatal to that cause of action of the plaintiff:

"* * * Said exhibit (Exhibit C) does not however say anything about the property mentioned in the complaint or the portion thereof that is in litigation. There is nothing in Exhibit C which shows that plaintiff's mother was in possession of the aforesaid property. Plaintiff's contention that his parents had been in possession of the property is not sustained by the evidence."

In his brief, plaintiff-appellants's counsel has made the insinuation that the adjoining lands of the defendants are not within the land claimed by the plaintiff and described

in his complaint, because while the defendants are claiming lands located in sitio *Managopata,* La Paz, Banate, Iloilo (Exhibits 9 and 3), the plaintiff's land is situated in sitio *Pangalatcaton,* Banate, Iloilo. This argument merely bares the shaky and uncertain stand of the appellant. Said appellant pin-pointed the lot in question as embraced within lots Nos. 1 and 2 of his Exhibits A and B. In reply to a question prepounded by the court below, the appellant stated that the land involved in this case is the very same lot which was the subject-matter of Civil Case No. 6 of the Justice of the Peace Court of Banate, Iloilo, commenced by his deceased father against the defendants herein. Tax Declaration No. 3292 (Exhibit L–A for appellant), which was superseded by Tax Declaration No. 3643, mentioned in the description of the property quoted in the complaint, indicates that the lot covered by said Exhibit L–A is partly contested by the defendants herein.

The land in question is in the admitted possession of the defendants-appellees since January, 1948. The source of the appellant's claim of title is the deed of sale (Exhibit C), executed on September 4, 1954, by his own mother, Paz Villaluz Vda. de Bakabak. Except tax declarations, however, the appellant did not present any documentary evidence showing his mother's title to the property. Upon the other hand, in a previous case involving the land in question (Civil Case No. 872, Court of First Instance of Iloilo; Exhibit 12), the court below rendered a judgment on January 25, 1949, in favor of Fortunato Juanico, finding this defendant in the actual, continuous and uninterrupted possession of the property for over 40 years:

"En cambio, la posesion no interrumpida por los demandados del terreno de Managupaya durante mas de cuarenta años ha sido establecida por preponderancia de prueba, a saber, el ya citado Nemesio Ramos, los colindantes Anselmo Pacheco, Cristeta Bactung y los aparceros Dominador Alvances y Elias Peñafiel; terreno este de Managupaya en el que, con el consentimiento de los demandados, tienen erigidas casas Filomeno Pelucidario, Eustaquio Palomado y Luis y Jose Juanico, ademas de los demandados (Exh. 1), hecho este ultimo, de las referidas casas, declarado en juicio por el demandado Fortunato Juanico, no contraprobado por el demandante."

In view of all the above, we find no reversible error having been committed by the lower court, and so hereby affirm the judgment appealed from in all its parts, with costs against the plaintiff-appellant.

SO ORDERED.

Makalintal and *Castro, JJ.,* concur.

Judgment affirmed.

[No. 20607-R. May 6, 1959]

ROSARIO PINEDA DE JUANEZA, plaintiff and appellee, *vs.* EUGENIO PALU-AY and MARIA PELOBELLO, defendants and appellees, EMILIO PINEDA, defendant and appellant.

OBLIGATIONS; PAYMENT; LEGAL INTEREST, WHEN RECOVERABLE.—The general rule is that legal interest, being in the nature of damages for failure to comply with an obligation to pay a sum of money, is recoverable only from the date of demand, judicial or extra-judicial, because it is only then that the obligor incurs in delay (Article 1100, C. C., now Article 1169). Even in cases of undue payment, as when something is received when there is no right to demand it and it was delivered through mistake, the payee is liable for legal interest only if he accepts such payment in bad faith (Articles 1895 and 1896, C. C., now Articles 2154 and 2159).

APPEAL from a judgment of the Court of First Instance of Iloilo. Jarencio, J.

The facts are stated in the opinion of the Court.

Nicanor D. Soraĩgon, for defendant and appellant.

Laurea, Laurea & Associates, for defendants and appellees.

Luis E. Lozano, for plaintiff and appellee.

MAKALINTAL, *J.:*

This is an appeal from the judgment of the Court of First Instance of Iloilo dated March 12, 1957 ordering the defendant-appellant Emilio Pineda to return the amount of ₱500.00 to the spouses Eugenio Palu-ay and Maria Pelobello, the defendants-appellees and cross-claimants against Eugenio Pineda, with interest at the legal rate from January 19, 1948 and costs.

The following facts are not disputed: In 1947 a complaint was filed in the Court of First Instance of Iloilo (Civil Case No. 682) for the recovery of a certain parcel of land, with Rosario, Antifas, Emilio, Cristeta and Visitacion, all surnamed Pineda, as plaintiffs, and the spouses Eugenio Palu-ay and Maria Pelobello as defendants. In 1948 a written amicable settlement was submitted by the parties, signed by their respective attorneys and also, on the part of the plaintiffs by Visitacion Pineda in her own behalf and by Emilio Pineda for himself and in behalf of Antifas, Cristeta and Rosario Pineda. In that settlement the plaintiffs, in consideration of the sum of ₱2,500.00, renounced and waived their claim to the land in question in favor of the defendants and agreed that the latter be declared the owners of the property. The settlement was approved by the Court and judgment was rendered in accordance therewith on January 19, 1948.

On February 14, 1952 Rosario Pineda commenced the present action against her brother Emilio Pineda and the

spouses Eugenio Palu-ay and Maria Pelobello, alleging in effect that she did not authorize the inclusion of her name as one of the plaintiffs in the former civil case and that she never agreed to renounce or waive her right to her share in the property subject thereof, and asking that the said defendants be ordered to pay her damages and attorney's fees. At the trial the parties stipulated and agreed that Rosario Pineda was not bound by the amicable settlement aforementioned nor by the judgment rendered pursuant thereto, because she did authorize anybody to include her name or to represent her in the litigation. It was likewise stipulated that the consideration of ₱2,500.00 was received by Emilio Pineda and that no part of it was paid to Rosario Pineda.

The only issue is whether the amicable settlement entered into the Civil Case No. 682 and the amount paid as consideration therefor was intended by the parties to include the claim and interest of Rosario Pineda, as now contended by the herein defendants-appellees and cross-claimants, or whether such settlement was only with respect to the shares of the four other plaintiffs (in Civil Case No. 682) in the litigated property, as alleged by the defendant-appellant Emilio Pineda. The trial Court found in favor of the cross-claimants and ruled that inasmuch as they paid ₱2,500.00 on the understanding that Rosario Pineda was also waiving her claim to the disputed property they are entitled to recover the sum of ₱500.00 from Emilio Pineda as the corresponding share which was never paid to her.

We find nothing in the evidence to warrant reversal of the Court's finding. Rosario Pineda was one of the five plaintiffs named in the complaint in Civil Case No. 682. The amicable settlement was signed by her counsel and by her co-plaintiff Emilio Pineda in her behalf. The judgment merely quoted and approved the settlement and ordered all the parties in the case to abide by its terms. It is quite clear that the defendant therein, Eugenio Palu-ay and Maria Pelobello, gave their conformity in the belief that they were paying for the waiver by all the plaintiffs of their claims to the disputed land. If it subsequently turned out, as it did, that Rosario Pineda had never authorized her brother Emilio Pineda to represent her, it was the latter who was at fault and who should therefore return to the cross-claimants the amount of ₱500.00 received by him for his sister but never paid to her.

Emilio Pineda, however, excepts to the ruling of the trial Court that he should pay interest on the sum of ₱500.00 from January 14, 1948, the date the amicable settlement was entered into. The general rule is that legal interest, being in the nature of damages for failure

to comply with an obligation to pay a sum of money, is recoverable only from the date of demand, judicial or extra-judicial, because it is only then that the obligor incurs in delay (Art. 1100, C. C., now Art. 1169). Even in cases of undue payment, as when something is received when there is no right to demand it and it was delivered through mistake, the payee is liable for legal interest only if he accepts such payment in bad faith (Arts. 1895 and 1896, C. C., now Arts. 2154 and 2159). There is no clear evidence that Emilio Pineda acted in bad faith in including his sister Rosario Pineda as one of the plaintiffs in Civil Case No. 682 and in representing her in the amicable settlement subsequently entered into. The general rule governing default in the performance of obligations should therefore apply and he should be held liable for interest only from the date of demand, namely, from October 3, 1955, when the defendants-appellees filed their cross-claim against him.

WHEREFORE, with the foregoing modification as to the date when the liability of defendant-appellant for legal interest should begin to accrue, the judgment appealed from is affirmed, with costs.

SO ORDERED.

De Leon and *Castro, JJ.*, concur.

Judgment affirmed.

[No. 23901–R. Abril 29, 1959]

LUIS MANALANG, recurrente, *contra* HON. HIGINO B. MACADAEG, JUEZ DE PRIMERA INSTANCIA DE MANILA, ET ALS., recurridos.

ACCIÓN POSESORIA; DECISIÓN EN UNA ACCIÓN "IN PERSONAM," EFECTO; ORDEN DE DEMOLICIÓN; CASO DE AUTOS.—Una acción posesoria es de caracter puramente personal y la sentencia dictada en la misma solamente tiene fuerza legal entre las partes y sus causahabientes (Sección 44 (*b*) Regla 39 de los Reglamentos de los Tribunales; Ang Lam *vs.* Rosillosa et al., G. R. Núm. L–3595, mayo 22, 1950; Fule *vs.* Abad Santos, 40 Off. Gaz., (5) 975; Cruzcosa *vs.* Concepción, G. R. Núm. 11146, abril 22, 1957) y una persona que no ha sido parte en el asunto no puede ser afectada por la decisión (Galang *vs.* Uytiepo, G. R. Núm. L–5011, diciembre 17, 1952). Por tanto, el Tribunal *a quo* obró sin jurisdicción en el caso de autos al ordenar la demolición de la casa del recurrente sin darle una oportunidad a presentar sus pruebas sobre propiedad del inmueble.

JUICIO ORIGINAL en el Tribunal de Apelaciones. Recurso de certiorari y mandamus.

Los hechos aparecen relacionados en la decisión del Tribunal.

Luis Manalang Associates, en representación del recurrente.

San Juan, Africa & Benedicto, en representación de los recurridos Marcelino Timbang y Maria Garcia.

El Fiscal Hermogenes Concepcion, Jr. y *el Fiscal Auxiliar Artemio H. Cusi* de la Ciudad de Manila, en representación de los recurridos Juez y Sheriff.

HERNÁNDEZ, *M.:*

En la presente actuación de certiorari y mandamus instituida por Luis Manalang ante este Tribunal se discute la validez y alcance legal de la orden de demolición expedida por el Juzgado de Primera Instancia de Manila en la causa civil número 15410, concebida en los siguientes términos:

* * *

"The 'Motion for Special Order of Demolition' filed by counsel for plaintiffs is hereby granted.

Defendant is hereby ordered to vacate the premises in question within ten (10) days from receipt hereof. Upon his failure to do so the Sheriff shall demolish the building at the expense of the defendant." * * * (Pag. 8, Petición)

En la parte petitoria se solicitan estos remedios alternativos:

(a) Que se ordene al Tribunal *a quo* a suspender ulteriores tramitaciones en la causa civil número 15410 intitulada "Maria A. Garcia and Marcelino Timbang, Plaintiffs *versus* Augusto Manalang, Defendant" hasta la determinación final de otras causas relacionadasa con la misma ó

(b) Que se instruya al referido Juzgado a recibir pruebas sobre la propiedad del edificio cuya demolición se ha ordenado en virtud de la orden aquí discutida.

Para la fácil comprensión de las cuestiones discutidas entre las partes, se impone un relato algo detallado de los hechos que dieron margen a la presentación del presente recurso.

En 21 de diciembre de 1951 los esposos Maria A. Garcia y Marcelino Timbang alegando ser dueños de una parcela de terreno conocida como lote 2, bloque 6 de la entidad Urban Estates, Inc. situada en el distrito de Sampaloc, Manila, presentaron una acción publiciana contra *Augusto* Manalang con el objeto de lanzar a éste del referido lote. La acción se registró en el referido Juzgado como causa civil número 15410. En la contestación presentada por el demandado Augusto Manalang se alegó claramente que él había dejado de ser dueño de la casa identificada con el número 1131 habiendo vendido en septiembre 24 de 1949 dicha propiedad a *Luis* Manalang y con respecto a la puerta identificada con el número 1133, el demandado no tiene nada que ver con dicha propiedad puesto que la misma ha sido construida por Adelfa I. de Manalang.

En defensa especial, al demandado *Augusto* Manalang alegó que el lote tiene una extensión superficial de 753.4 metros cuadrados y los otros ocupantes del referido lote son los siguientes: Narciso F. Fontecha, Bernardino Melendres, Julian Quides, Wenceslao Galapia, Policarpio Cajite, Maximo Aquino y Pedro Rico. En la parte petitoria de la contestación se solicita que sean incluidos como demandados, la corporación Urban Estates, Inc., Luis Manalang, Adelfa I. Manalang y los otros ocupantes arriba mencionados. Tanto el Tribunal *a quo* como los demandantes Maria Garcia y Marcelino Timbang ignoraron la petición de inclusión formulada por el demandado *Augusto* Manalang y se señaló la causa para su vista en el fondo.

En marzo 11 de 1952, el abogado Julian M. Manansala en nombre del demandado *Augusto* Manalang con la conformidad de los demandantes, pidió la trasferencia de la vista para el 9 de abril de 1952. Antes de la vista, o sea, el 7 de abril de 1952 el Juzgado trasfirió la vista de la causa para el 2 de junio de 1952 debido, según la orden, a la falta de tiempo material. Copia de la orden fué servida a una hija de quince años de edad de *Augusto* Manalang pero ésta se olvidó de entregar la notificación al demandado y cuando se llamó a vista la cuasa el 2 de junio de 1952 el demandante no compareció en la vista por cuyo motivo el Tribunal *a quo* permitió a los demandantes a presentar sus pruebas ante el escribano delegado.

El 9 de junio de 1952 *Augusto* Manalang presentó una moción para que se deje sin efecto la acción tomada

por el Tribunal *a quo*. Al parecer se denegó la moción y en julio 27 de 1953 el Juzgado dictó una decisión a favor de los demandantes ordenando a ldemandado *Augusto* Manalang a vacar el lote discutido, a pagar un alguiler mensual de ₱200.00 por la ocupación del referido lote desde el mayo de 1949 hasta que vaque el referido lote, más la cantidad adicional de ₱500.00 por honorarios de abogado (Anexo "C").

Augusto Manalang pudo llevar en grado de apelación la causa número 15410 (por una acción posesoria iniciada contra él por los esposos (Garcia) ante el Tribunal Supremo donde se suscitó la cuestión de jurisdicción del Juzgado de Primera Instancia de Manila porque Manalang contendía que el Juzgado carecía de jurisdicción al proceder con la vista de la causa en ausencia del demandado ó de su abogado y luego dictar una sentencia sobre los méritos de la misma. El Tribunal Supremo en una decisión promulgada en 29 de noviembre de 1956 dijo en parte lo siguiente:

* * *

"In the present appeal taken by the appellant, it is argued that the appellees have not acquired ownership and therefore are not entitled to the possession of the land in question; that on April 8, 1952, when appellant's counsel filed the motion to dismiss, said counsel must be considered as having formally appeared and the notice of hearing issued on April 7, 1952, should have been served upon him and not upon appellant: that at any rate, the receipt by appellant's 15–year old daughter (who still lacks discretion and sense of responsibility) of the notice without having called appellant's attention thereto, as a result of which appellant failed to appear at the trial, would or may amount to accident or exusable negligence; that the order of the lower court allowing the appellees to present their evidence in the absence of the appellant was one of default which is illegal, because an order of default may be issued only when the defendant fails to file an answer.

These contentions are untenable. It is not disputed that the appellees have bought the land in question on installment basis, and although under their contract the ownership is retained by the vendor Urban Estates, Inc., the possession was granted to the appellees, and this is a situation allowed by law (Article 1584, Civil Code). (*In the present case the only issue involved as between the parties is physical possession of the property in question, not its title or ownership.*) The appellant has failed to show a better right to said possession.

Although counsel for appellant had served for, postponement of the trial prior to April 7, 1952, no formal appearance was made by said counsel, with the result that the notice of the order of April 7, 1952 setting the trial of the case for June 2, 1952, was properly served upon the appellant through his 15–year old daughter who has not been shown to be under any such physical or mental disability as to deprive her of sufficient discretion and judgment to receive such notice. It is true that counsel for appellant filed a motion to *dismiss on April 8, 1952, but that was one day after the issuance of the order for hearing.*" * * * (Pags. 2 y 3, Anexo "D"; las cursivas son nuestras)

Habiendo adquirido caracter firme la decisión del Tribunal Supremo, el Juzgado *a quo* en julio 23, 1957 ordenó la ejecución de la decisión. El sheriff de Manila presentó al Tribunal un escrito intitulado "Manifestation" en donde hizo constar que en consonancia con la petición de los abogados de los demandantes el sheriff trató de embargar cierto edificio identificada con los números 1131–1133 en la calle de España, Sampaloc, alegadamente de la propiedad de *Augusto* Manalang. Durante la investigación, sin embargo, el sheriff descubrió que la propiedad estaba declarada a nombre de Luis Manalang y los archivos del mismo sheriff demuestran que en agosto 14 de 1951 *Augusto* Manalang y Victoria Dabu firmaron una hipoteca de bien mueble sobre la misma propiedad a favor de Renato Manalansan y que a petición del acreedor, la oficina del sheriff vendió en subasta pública la propiedad al acreedor Benito Manalansan. Como el abogado de los demandantes insistía en el embargo de la propiedad, el sheriff hizo una consulta al fiscal de la ciudad, quien afirmó que la casa no debe ser objecto de embargo de parte del sheriff. En vista de la insistencia de los demandantes el sheriff de Manila presentó al Tribunal la referida manifestación, cuyo último párrafo es como sigue:

* * *

"However, if it is the intention of this Honorable Court that under its Order the Sheriff levy on the building in question *as property of defendant* Augusto Manalang, *although it clearly appears that it is not his* as above shown, it is most respectfully prayed that an express order to that effect be issued for his guidance.

Manila, Philippines, August 10, 1957." * * *

(Pag. 4, Anexo "E")

En vista de esta manifestación del sheriff de la ciudad, los abogados de los esposos demandantes Garcia presentaron una moción para la demolición del edificio identificado con los números 1131–1133. En el entretanto, Benito Manalansan presentó una demanda contra Luis Manalang, *et al* ante el mismo Juzgado de Manila que se registró como causa civil número 21320 en la cual Benito Manalansan reclama un derecho prefeernte sobre la casa tantas veces referida. Despúes de la vista correspondiente, el Tribunal sobreseyó la demanda y en uno de los considerandos de la decisión se dice:

* * *

"Hence, when the same building was mortgaged by Augusto Manalang and Victoria Dabu in favor of the plaintiff on August 14, 1951, the mortgagors were no longer the owners of that building. What the plaintiff, therefore, purchased at the public auction made by the Sheriff of Manila on May 14, 1956, was not the property of the mortgagors, but the property of defendant Manalang who has had no obligations to the plaintiff with respect to that property." * * * (Pag. 6, Anexo "I")

Manalang referido en le párrafo anterior es Luis Manalang, peticionario en la presente actuación. No estando satisfecho con el resultado de la causa, Benito Manalansan apeló de la sentencia ante este Tribunal y el asunto está pendiente de resolución.

Cuando se sometió a la consideración del Tribunal *a quo* la moción de los esposos Garcia sobre la demolición del edificio aquí discutido, el recurrente Luis Manalang compareció personalmente y se opuso a la demolición por el fundamento de que él era el dueño de la casa. En apoyo de su oposición verbal el apelante presentó informes por escrito (Anexos "L" y "M").

En vista de esta oposición el mismo Tribunal en 19 de abril de 1958 señaló a vista la moción de demolición para el 23 de abril de 1958 a las 8:00 de la mañana para la recepción de las pruebas de las partes. En vista, sin embargo, de ciertas manifestaciones hechas en estrados por el abogado de los esposos Garcia, el Tribunal cambió de parecer y el 4 de junio de 1958 dictó una orden del siguiente tenor:

* * *

"IN VIEW of the manifestation made by counsel for the plaintiff in open court to the effect that he believes that there is no need to further present evidence to show ownership of the property in question for the reason that this issue has been passed upon by this Court, the motion for demolition is hereby submitted for resolution.

The motion to suspend proceedings filed by counsel for the opposition which has not been acted upon by Judge Gregorio S. Narvasa due to his illness, is also submitted for resolution by this Court." * * * (Pag. 7, Petición)

Más tarde, como queda indicado, sin oir las pruebas del recurrente sobre la propiedad de la finca discutida dictó la orden arriba acotada.

Conviene además consignar que antes de la expedición de la orden aquí discutida, *Luis* Manalang y otros iniciaron una acción registrada como causa civil núm. 16133 del Juzgado de Primera Instancia de Manila dirigida contra los esposos Garcia y la Urban Estates, Inc. cuyo objeto es pedir la anulación de la venta otorgada por la Urban Estates, Inc. a favor de Maria A. Garcia por el fundamento de que la Urban Estates, Inc. y su predecesor Juan Tuason se habían comprometido a los ocupantes de los terrenos a vender a éstos las porciones ocupadas por los mismos. En la demanda enmendada se alega que la misma Urban Estates, Inc. ha cancelado la venta otorgada a favor de Maria A. Garcia por haber dejado ésta de pagar los plazos estipulados (Anexos "J" y "K"). Aparecen como demandantes en esta causa núm. 16133 las personas que según *Augusto* Manalang eran los ocupantes del lote ya indicado cuando se inició la acción posesoria (causa número 15140) donde se expidió la orden de demolición.

Hemos querido indicar los varios incidentes que tienen relación en cierto modo con la presente causa con el objeto de proyectar con mayor precisión nuestra atención sobre la cuestión batallona de si el Juzgado de Primera Instancia abusó gravemente de su discreción ó actuó sin jurisdicción al ordenar la orden de demolición en la forma que lo hizo.

Indudablemente, la acción original entablada por Maria A. Garcia y su esposo Marcelino M. Timbang contra Augusto Manalang era puramente una acción posesoria, pero es significativo consignar que en la demanda se alega claramente que *Augusto* Manalang es el dueño de un edificio de dos pisos construido en el lote e identificado con los número 1131–1133 de la calle de España, Sampaloc. En la misma demanda se desprende claramente que el edificio ya existía cuando los esposos adquirieron el lote donde está construida la referida finca. Según el contrato de venta firmado entre Maria A. Garcia y la Urban Estates, Inc. el precio de todo el lote 6 con un área de 753.4 metros cuadrados es ₱30,400.00. Maria A. Garcia hizo un anticipo de ₱1,500.00 comprometiéndose a pagar cada mes ₱573.75 (Exh. "E").

La acción entablada por los esposos Garcia-Timbang siendo meramente una acción posesoria es de caracter puramente personal y la sentencia dictada en la misma solamente tiene fuerza legal entre las partes y sus causahabientes (Sección 44 (b), Regla 39 de los Reglamentos de los Tribunales; And Lam *vs.* Rosillosa et al, G. R. Núm. L–3595, mayo 22, 1950; Fule *vs.* Abad Santos, 40 Off. Gaz. (5) 975; Cruzcosa *vs.* Concepción, G. R. Núm. 11146, abril 22, 1957) y una persona que no ha sido parte en el asunto no puede ser afectada por la decisión (Galang *vs.* Uytiepo, G. R. Núm. L–5011, diciembre 17, 1952).

Las Reglas de los Tribunales al hablar de los efectos de un fallo, en su sección 44 párrafo (b) de la Regla 39 fija el efecto o alcance de la palabra causahabiente como sigue:

"SEC. 44. Effect of judgment.—The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:
(*a*) * * *
(*b*) In other cases the judgment so ordered is, in respect to the matter directly adjudged, *conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding*, litigating for the same thing and under the same title and in the same capacity."
(Las cursivas son nuestras).

Es cierto que *Luis* Manalang, según algunos escritos obrantes en autos es un causahabiente de *Augusto* Manalang, pero dichos escritos alegan de una manera inequívoca que *Luis* Manalang es adquirente de los derechos de

Augusto Manalang en la finca discutida dos (2) años antes de la iniciación de la acción posesoria.

Para que se pueda proceder, por consiguiente, a la demolición del edificio existente en el terreno ya indicado es imperativo determinar si el recurrente *Luis* Manalang es un causahabiente del demandado *Augusto* Manalang posterior a la iniciación de la causa 15410 o si el recurrente *Luis* Manalang es una mera pantalla del demandado *Augusto* Manalang para hacer inefectiva la decisión dictada en la referida causa por acción posesoria.

Con el objeto de hacer justicia a las partes nuestro Tribunal Supremo en una serie de decisiones ha señalado el procedimiento que se debe seguir en estos casos. En la causa de Omaña et al. *vs.* Gatulayao, 73 Phil. 66, se expresó de esta forma:

* * *

"It is not disputed that movants-appellants were never made parties to the proceeding wherein Omaña and others were adjudged owners of the land in question nor do they sustain any relation of privity with said parties, or any of them. *They cannot, therefore, be bound by the judgment rendered therein in favor of said plaintiffs, and the enforcement of said judgment against them is in excess of jurisdiction. Judgment rendered in actions in personam, as in the instant case, are enforcible only between the parties and their successors in interest, but not against strangers thereto.* (Sec. 306, par. 2, of Act No. 190, now Rule 39, sec. 44 (*b*), Rules of Court). There may be cases when the actual possessor may be claimed to be a privy to any of the parties to the action, or his bona-fide possession may be disputed, or where it is alleged, as in the instant case, that such possession has been taken in connivance with the defeated litigant with a view to frustrating the judgment. *In any of these events, the proper procedure would be to order a hearing on the matter of such possession and to deny or accede,* to the enforcement of a writ of possession as the finding shall warrant. *But in the absence of any such hearing or any proceeding of similar character, every person in the actual possession of the land has a right to be* respected therein (art. 446, Civil Code) and his ejectment would constitute a deprivation of a property right without the process of law." * * *

(Pag. 68; las cursivas son nuestras)

En una causa posterior (Santiago *vs.* Sheriff de Manila, 77 Phil. 740) el Tribunal reiteró el mismo criterio:

"* * * La sentencia dictada en el presente asunto es *in personam*, y como tal sólo es obligatoria para las partes y no para extraños. (Art. 44, pár. (*b*), Regla 39). Si el recurrente Anacleto Santiago, que no fué parte en la causa por desahucio, era poseedor de buena fe de la finca en cuestión, la sentencia dictada en dicha causa no podía ejecutarse válidamente contra él. Se puede insistir, sin embargo, en la ejecución de la sentencia si se prueba que el poseedor es simplemente un causahabiente, o un huésped, ó un agente del ejecutado en el propósito fraudulento de frustrar la sentencia: *en tal caso, debe haber un procedimiento en el Juzgado de Primera Instancia que expidio la orden de ejecucion para la dilucidacion del caracter de la posesion del ocupante extrano.*" * * *

(Pag. 743; las cursivas son nuestras)

Queda indicado que el Tribunal *a quo* al principio señaló a vista la moción de demolición precisamente con el objeto de recibir los pruebas de las partes pero más tarde cambió de opinión sin dar oportunidad al recurrente *Luis* Manalang a presentar sus pruebas. La acción tomada es errónea a la luz de las doctrinas arriba apuntadas.

Antes de terminar, queremos indicar ciertos incidentes que hemos notado en esta causa. Los esposos demandantes en la causa número 15410 intentaron en los comienzos, trabar un embargo de la propiedad aquí discutida. De haber insistido los demandantes Garcia en la subasta, *Luis* Manalang pudo haber presentado su tercería ante el sheriff y discutir más tarde en juicio apropiado la propiedad del edificio aquí discutido. Los esposos Garcia no insistieron, sin embargo, en el embargo y venta en subasta pública del referido edificio. Es de advertir que de acuerdo con la decisión del Tribunal *a quo* se adjudicó a los esposos Garcia la cantidad de ₱200.00 al mes o a razón de ₱2,400.00 al año, como alquiler del terreno desde el mayo de 1949. Hasta el 15 de agosto de 1958 en que se dictó la referida orden de demolición han transcurrido más de nueve años y los demandantes esposos tenían a su favor como importe de los alquileres vencidos la respetable suma de ₱21,600.00. Con esta cantidad pudieron haber pujado en la subasta y quedarse con la finca aquí discutida; pero al parecer, los esposos Garcia no optaron por el embargo y la venta en subasta del inmueble porque no estaban seguros del título del demandado *Augusto* Manalang.

Por las consideraciones arriba expuestas, somos de parecer que el Tribunal *a quo obr*o sin jurisdicción y con grave abuso de su discreción al dictar la orden del 15 de agosto de 1958 ordenando la demolición de la casa aquí discutida sin dar una oportunidad al recurrente a presentar sus pruebas sobre la propiedad del inmueble.

No debemos olvidar que en consonancia con el nuevo Código Civil una casa es un inmueble aún cuando el dueño de ella no fuese el dueño del terreno (Art. 415 N. C. C., Associated Insurance *vs.* Isabel Iya, G. R. Núm. L–10837, mayo 30, 1958). Una vez demolido un edificio ya no es un inmueble sino pedazos de madera y escombros de escaso valor material. Entendemos que de ponerse en vigor la orden aquí discutida equivaldría a privar a Luis Manalang de un inmueble sin debido proceso de ley en el caso de que fuese realmente el dueño del mismo.

Con respecto a la reclamación de daños por el valor del edificio o que el recurrente formula en su réplica a la contestación de los recurridos, los esposos María García y Marcelo Timbang, semejante reclamación viene a ser una contra demanda que el recurrente pudo haber formulado si hubiese intervenido como tercerista demandado en la

acción posesoria, causa No. 15410. No creemos procedente suscitar por ahora la cuestión de la reclamación por daños porque nuestra jurisdicción en la presente actuación se limita a resolver el procedimiento que el tribunal *a quo* debe adoptar con respecto a lo demolición de la finca. Procede, sin embargo, a nuestro juicio reservar al recurrente el derecho de presentar una acción separada por daños si definitivamente se resuelve a su favor la cuestión de la propiedad del edificio objeto de la presente actuación.

POR LAS CONSIDERACIONES arriba expuestas, nos vemos constreñidos a:

(*a*) Declarar nula y de ningún valor la orden del Tribunal *a quo* de agosto 15 de 1953;

(*b*) Ordenar al Juzgado inferior a señalar a vista la petición de demolición arriba referida durante la cual las partes deben presentar sus pruebas referente a la propiedad de la finca aquí discutida;

(*c*) Instruir al Juzgado de origen que una vez presentadas las pruebas de las partes, dicte la orden correspondiente de acuerdo con la ley y los hechos probados en juicio; y

(*d*) Declarar firme el interdicto prohibitorio preliminar dictado en este expediente hasta que se resuelva definitivamente la propiedad del edificio que se trata de demoler.

Los recurrentes, con la excepción del Honorable Juez recurrido, pagarán las costas.

ASÍ SE ORDENA.

Gutiérrez David, Pres., Dizon, Sanchez y *Amparo, MM., están conformes.*

Se concede la petición.

[No. 23171-R. Mayo 5, 1959]

PAZ (PACITA) SUGAY, demandante y apelada, *contra* FELIX GERMAN, ET AL., demandados y apelantes

1. CONTRATOS; HIPOTECA.—Cuando no se estipula en un contrato interés alguno sino que, en su lugar, se conviene que "mientras dure esta hipoteca," el "acreedor hipotecario continuara en la posesión y sera suyo todos los productos del terreno que percibiere anualmente," les indudable que la intención de los contratantes es considerar el exceso de los productos, después de deducidos los gastos de cultivo y cosecha, como intereses del dinero prestado. Y esto es perfectamente legal, porque no es esencial para un contrato de hipoteca que la propiedad hipotecada quede en poder del deudor hipotecario ni que el interés del crédito, en compensación del uso del capital y del goce de sus frutos, consista precisamente en un tanto por ciento sobre dicho capital (Arts. 1874 y 1875, antiguo Código Civil; Legaspi y Salcedo *vs.* Celestial, 66 Phil. 378.
2. ID.; ID.; VALIDEZ DE HIPOTECAS NO INSCRITAS.—Es cierto que el artículo 1875 del antiguo Código Civil no provee, como el nuevo que el contrato de hipoteca no registrado es, sin embargo, obligatorio entre las partes. Mas, esta falta ha sido suplida por el artículo 194 del Código Administrativo Revisado, tal como quedó enmendado por la Ley Núm. 3344; de tal manera que desde el año 1917, en que se aprobó dicho código, las hipotecas no inscritas son válidas y obligatorias entre las partes y sus herederos.
3. ID.; ID.; DIFERENCIA ENTRE EL CONTRATO DE HIPOTECA Y EL DE ANTICRESIS.—En el contrato de hipoteca, el deudor hipotecario siempre paga el impuesto territorial mientras que en el de anticresis lo paga el acreedor, salvo pacto en contrario (art. 1882 del antiguo Código Civil).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Nueva Ecija. Makasiar, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

Bausa, Ampil & Suarez, y *Prudencio de Guzman,* en representación de los demandados y apelantes.

Geronimo O. Veneracion Jr., en representación de la demandante y apelada.

CABAHUG, *M.:*

El 1.° de Junio de 1923, Francisco D. Mendoza otorgó y ratificó ante la fe del Notario Público Pelagio P. Flores el documento que a continuación se transcribe:

"SEPAN CUANTOS LA PRESENTE VIEREN Y LEYEREN:

"Yo, Francisco D. Mendoza, casado, mayor de edad y residente en el municipio de Cuyapo, provincia de Nueva Ecija, I. F., teniendo capacidad legal y necesaria para otorgar esta escritura, por la presente hago constar:

"Que, en consideración a la suma de ₱400.00 pesos, moneda filipina que he recibido del Sr. Rosendo Santiago, viudo, mayor de edad y de esta misma vecinidad, cado y traspaso en calidad de 'HIPOTECA' al mencionado Sr. Rosendo Santiago, sus herederos y causahabientes una parcela de terreno de mi propiedad situada en el sitio de

Duplac, Cuyapo, Nueva Ecija, cuyos limites y linderos son como sigue:
'Al Norte, Camino para Nampicuan; al Este, Terreno de Rosendo Santiago; al Sur, terreno de Juan Dagdag y al Oeste, terreno de Rufina Mendoza y mide unos 2 hectareas'.

"Que, el terreno arriba descrito es de mi exclusiva propiedad por habermelo donado mi padre Martin Mendoza.

"Que, el termino de la hipoteca es de dos (2) años a contar desde esta fecha, pero, pasado dicho termino y no pudiera rescatar e devolver la suma por que esta hipotecada dicha propiedad, dicho acreedor hipotecario continuara en la posesión y sera suyo todos productos del terreno que percibiere anualmente mientras dure esta hipoteca.

"En testimonio de todo lo expuesto, firmo la presente en presencia de dos testigos, hoy en Cuyapo, Nueva Ecija, a 1.° de junio de 1923.

FRANCISCO D. MENDOZA

FIRMADO EN PRESENCIA DE:
(Fdo.) TEODOSIA DE LEON (Fdo.) PELAGIO P. FLORES."
(Exhíbito 1)

De conformidad con lo convenido en este documento, la posesión del terreno en el mismo mencionado se ha entregado a Rosendo Santiago quien se aprovechó de sus productos hasta su fallecimiento le 1933. Liquidada la administración de los bienes del acreedor Santiago, el crédito de ₱400.00 se adjudicó en la repartición a su nieta Conchita Maniquis German, esposa de Felix German, quien hasta ahora posee, cultiva y se aprovecha de sus productos. En deudor Mendoza falleció el año 1927 dejando como herederos a su viuda Paz Sugay, hijas Hermógena Mendoza, Rosario Mendoza y nietos Bighani, Evelyn y Aurora, también apellidados Mendoza. El 1951, Paz Sugay requirió, por medio de sus dos hijas, a Conchita German la entrega de la posesión del terreno un cuestión; pero Conchita se negó y sigue negándose a hacerlo a menos que se la pague la deuda de ₱400.00 justificada por el instrumento arriba transcrito. En vista de esta negativa, Paz Sugay, sus hijas y nietos, éstos representados por su madre Consorcia Alvaran, instituyeron la acción presente contra los esposos Felix German y Conchita German que se decidió ordenando a los demandados al (1) Entregar a los demandantes el lote Núm. 2401 del castastro de Cuyapo cubierto por el Certificado de Transferencia (debe ser Original) de título Nóm. 4912 de la Oficina del Registrador de Títulos de Nueva Ecija; (2) entregarles la participación de los productos que corresponde al propietario desde 1945 hasta 1957 a razón de 50 cavanes de palay cada año, o su precio a razón de ₱10.50 cada caván, más sus intreses legales de 6%; y (3) pagarles las costas y la suma de ₱500.00 en concepto de honorarios de su abogado. No estando conformes con esta decisión, los demandados apelaron.

La cuestión principal y decisiva suscitada en esta apelación gíra alrededor del carácter y naturaleza del documento que se copia al comienzo de esta decisión. Los apelantes

contienden que, tal como lo indica, es de hipoteca; pero los apelados sostienen que es de anticresis.

Las partes no disputan que el terreno que ha sido materia del contrato celebrado por los difuntos Francisco D. Mendoza y Rosendo Santiago es el mismo que ahora se conoce como lote Núm. 2401 de la medición catastral de Cuyapo y se describe más detalladamente en el Certificado Original de Título Núm. 4912 (Exh. A). Tampoco disputan que el exhíbito 1 que arriba se transcribe sea la copia fiel y correcta del documento otorgado por el primero a favor del último el Junio 1, 1923, y que se guarda en la División de Archivos de la Biblioteca Nacional.

La lectura de este documento no deja lugar a dudas; sólo sugiere una cosa y es que con el mismo las partes contratantes celebraron un contrato de hipoteca. Francisco D. Mendoza cedía y traspasaba el terreno en cuestión a Rosendo Santiago "en calidad de 'HIPOTECA'"; el término convenido "de la hipoteca" es de dos (2) años, si pasado dicho término, el deudor, "no pudiera rescatar o devolver la suma por que esta hipotecada dicha propiedad, dicho acreedor hipotecario continuara en la posesión y sera suyo todos los productos del terreno que percibiere anualmente mientras dure esta hipoteca." El otorgante Mendoza califica el documento disputado como "hipoteca", llama a Rosendo Santiago "acreedor hipotecario"; alude a su lote como propiedad "hipotecada"; y tres veces nombra el referido documento como "hipoteca". En ninguna parte del mismo se usa la palabra "anticresis" ni se hace constar que el acreedor Santiago percibirá los productos del inmueble de Mendoza con la obligación de aplicarlos al pago de los intereses de la deuda de ₱400.00 y después al de esta misma deuda—lo cual constituye la esencia del contrato de anticresis (art. 1881, Código Civil vigente el 1923). Pero, no obstante las condiciones claras y expresas de este exhíbito y a pesar de que la palabra anticresis u otras equivalentes a dicha palabra no se pueden encontrar en el mismo aún con la ayuda de una lente de ampliación, el juzgado *a quo* declaró que dicho documento es de anticresis y no de hipoteca; y, al hacerlo, se basó únicamente en el testimonio sin corroboración de ningún género de la apelada Paz Sugay.

Paz Sugay no intervino en el otorgamiento del documento controvertido; pero declaró que en cierto medio día, el difunto Rosendo Santiago fuése a buscarla en su casa para preguntarla si ella estaba conforme con el préstamo solicitado por su esposo, el finado Francisco D. Mendoza; que ella manifestó su conformidad y preguntó a Rosendo por el convenio habido entre él y su marido; que Rosendo la contestó que el período de la hipoteca era de dos años, pero si su esposo no pudiera redimirla al cabo de dicho pe-

ríodo, Rosendo "will continue causing the cultivation of the land and the would-be excess of his expenses will be deducted from the borrowed money or from the loan" (p. 7, t.s.n.). El descarte de esta contestación se ha pedido oportunamente, por no ser responsiva a la pregunta y por ponder cierta manifestación en contra de sus intereses en la boca de un muerto que ya no podía desmentirla ni confirmarla. Pero el juzgado inferior denegó la petición de descarte y basó la decisión objeto de esta apelación en esta declaración indisputablemente interesada de la apelada. Surge, por tanto y por necesidad, la siguiente pregunta: ¿Tiene dicha declaración fuerza probatoria suficiente para destruir y cambiar por completo el sentido literal y el espíritu del documento que el mismo causante de los apelados bautizó con el nombre de hipoteca en mayúscula? En nuestra opinión, la contestación a esta pregunta es y tiene que ser negativa.

El exhíbito 1 es un documento público cuya autenticidad y debido otorgamiento por el causante de los apelados, difunto Francisco D. Mendoza, no se cuestionan por éstos. Es, por consiguiente, prueba fuerte aún contra tercero y más contra los herederos de Mendoza, como lo son los apelados. Para enervar su valor probatorio y cambiar sus términos y condiciones hay necesidad de una prueba clara, positiva, y convincente que excluye toda controversia de la falsedad de su contenido. Una mera preponderancia de pruebas—y menos una mera manifestación imputada por la parte interesada a uno cuyos labios ya ha sellado la muerte—no es suficiente para anular la presunción de su legalidad que nace de la ratificación hecha regularmente por un notario público (Monteverde *vs.* Infante, 45 Off. Gaz. 313; Bautista *vs.* Dy, 49 Off. Gaz. 179). Declarar lo contrario sería establecer una doctrina muy peligrosa que abriría de par en par las puertas del fraude (El Hogar Filipino *vs.* Olvida, 60 Phil. 17, 21). Erró, por tanto, a nuestro juicio, el juzgado *a quo* al declarar como contrato de anticresis al exhíbito 1.

Es verdad que en el contrato de hipoteca la posesión de la finca hipotecada y el aprovechamiento de sus productos ordinariamente quedan en poder del deudor; pero el traspaso de dichos posesión y aprovechamiento al acreedor no anulan al contrato y menos lo convierten en anticresis. Aún más: se autoriza y reconoce como pacto perfectamente legal si así lo acuerdan las partes contratantes, como así lo ha declarado expresamente la Honorable Corte Suprema en el asunto de Legaspi y Salcedo *vs.* Celestial, 66 Phil. 378. En el contrato que nos ocupa, al entregar a Mendoza la suma de ₱400.00, Santiago hizo un sacrificio privándose del uso de dicha cantidad y del goce de la ganancia que la misma produciría invertida en un negocio

lucrativo. Por consiguiente, no habiéndose cuando no se estipulado en dicho contrato interés alguno sino que, en su lugar, se convino que "mientras dure esta hipoteca," el "acreedor hipotecario continuara en la posesión y sera suyo todos los productos del terreno que percibiere anualmente," es indudable que la intención de los contratantes Mendoza y Santiago era considerar el exceso de los productos, después de deducidos los gastos de cultivo y cosecha como intereses del dinero prestado. Y esto es también perfectamente legal, porque no es esencial para un contrato de hipoteca que la propiedad hipotecada queda en poder del deudor hipotecario ni que el interés del crédito, en compensación del uso del capital y del goce de sus frutos, consista precisamente en un tanto por ciento sobre dicho capital (arts. 1874 y 1875 del mismo código; Legaspi y Salcedo *vs.* Celestial, *supra*).

También es verdad que, de acuerdo con el artículo 1875 del antiguo Código Civil (que es el aplicable a la transacción aquí cuestionada), para que una hipoteca quede válidamente constituida, debe otorgarse en un documento público y registrarse en la Oficina del Registro de Propiedad; y el exhíbito 1, aunque es un instrumento público, no está registrado. Esto, no obstante no convierte el referido instrumento en anticresis ni despoja o exime a las partes contratantes y, naturalmente, a sus herederos respectivos, de los derechos y obligaciones nacidos del mencionado exhíbito.

"A contract purporting to be a mortgage is not a mortgage at all until the same has been duly registered in the registry of property. In this jurisdiction it is indispensable statutory requirement, in order that a mortgage may be validly constituted, that the instrument by which it is created, be recorded in the registry of deeds. *Such contract, however, are valid and subsisting obligations between the parties thereto and may be used as evidence or proof of such obligations.*" (Lim Julian *vs.* Lutero, 49 Phil. 703.) (cursivas nuestras).

Asimismo es cierto que el mencionado artículo del citado antiguo cuerpo legal no provee, como el nuevo, que el contrato de hipoteca no registrado es, sin embargo, obligatorio entre las partes. Mas, esta falta ha sido suplida por el artículo 194 del Código Administrativo Revisado, tal como quedó enmendado por la Ley Núm. 3344; de tal manera que desde el año 1917, en que se aprobó dicho código, las hipotecas no inscritas son válidas y obligatorias entre las partes sus herederos.

"A mortgage on property not registered under the Torrens system or under the Spanish Mortgage Law *is valid, as between the parties,* under section 194 of the Administrative Code, whether it be registered or not; and if such a mortgage be registered in the special registry contemplated in said section, as amended, it is valid against everybody except a third person having a better right. This has the effect of abrogating so much of article 1875 of the Civil Code as denies

validity to mortgages not recorded in the registry of deeds under the Mortgage Law." (Estate of Mota *vs.* Concepcion, 56 Phil. 712) (cursivas nuestras).

Por otra parte, es un hecho admitido que la propiedad objeto del contrato en controversia está debidamente registrado bajo el certificado de título exhíbito A. Por ende, aunque el exhíbito 1 no puede producir el efecto de obligar el lote Núm. 2401 de la medición catastral de Cuyapo, Nueva Ecija, opera, sin embargo, como un contrato obligatorio entre sus partes y como prueba de la autoridad al Registrador de Título para verificar el registro de dicho documento (art. 50, Ley del Registro de Propiedad). De tal manera que, aún ahora, en ausencia de un tercero que ha adquirido el citado lote de buena fe y a título oneroso, el ascreedor hipotecario Rosendo Santiago por medio de su heredera, la aquí apelante Conchita German, puede todavía, bajo la autoridad de este artículo de la Ley Núm. 496, conseguir, si lo quiere la inscripción del susodicho documento exhíbito 1 en la Oficina del Registrador de Títulos de Nueva Ecija.

En el contrato de hipoteca, el deudor hipotecario siempre paga el impuesto territorial mientras que en el de anticresis lo paga el acreedor, salvo pacto en contrario (art. 1882 del antiguo Código Civil). En el contrato disputado no existe semejante pacto en contrario, y la apelada Sugay declaró que ella pagó la contribución territorial del lote cuestionado correspondiente a los años 1945–1951, si bien es verdad que no consta en el expediente quien pagó la que corresponde a otros años. Esta prueba suministrada por los mismos apelados es otra razón más que abona a favor de la conclusión de que el juzgado inferior erró al dar a la escritura de hipoteca exhíbito 1 cuya autenticidad y debido otorgamiento no están impugnados, como ya se ha dicho líneas arriba—un significado distinto del literal que se desprenda clara e inequívocamente de sus cláusulas explícitas y terminantes.

"The clear terms of a contract should never be the subject matter of interpretation. Their true meaning must be enforced as it is to be presumed that the contracting parties know their scope and effects. Construction and interpretation should not be resorted to where it is unnecessary and where it is possible to apply the terms of the contract, because to do otherwise would result in making a new contract between the parties." (Moran, Comments on the Rules of Court, III, p. 449, 1957 ed., citing Tan tua Sia *vs.* Biao Suntua, 56 Phil. 711, 712.)

Los apelantes no tienen derecho a recobrar de los apelados ninguna cantidad en concepto de daños morales y honorarios de abogado. No existe prueba de que la presente acción sea claramente infundada; en verdad, el juzgado *a quo* ha opinado lo contrario al fallarla a favor de dichos apelados. Y refiriéndose la citada acción a la interpretación de la

escritura pública exhíbito 1, no puede en manera alguna producir humillación social, angustia mental, seria ansiedad ni mancha a una buena reputación.

POR TODAS ESTAS CONSIDERACIONES, se revoca la sentencia apelada y, en su lugar, se dicta otra ordenando a los apelantes a otorgar la correspondiente escritura de cancelación del exhíbito 1 y la entrega del lote Núm. 2401 del catastro de Cuyapo, con todas sus mejoras, a los apelados tan pronto como éstos les paguen la suma de ₱400.00. Sin especial pronunciamiento en cuanto al pago de las costas.

ASI SE ORDENA.

Dizon y Peña, MM., están conformes.

Se revoca la sentencia.